

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

NEPR

Received:

Mar 9, 2022

7:08 PM

IN RE: PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: LUMA'S MOTION TO
STRIKE PORTIONS OF EXPERT
TESTIMONY OF JOSÉ ALAMEDA.

**RESPONSE TO LUMA'S MOTION TO STRIKE PORTIONS OF EXPERT
TESTIMONY OF JOSÉ ALAMEDA.**

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 Energy Bureau deny LUMA's *Motion to Strike Portions
of the Expert Testimony of José Alameda-Lozada*. In support of the request, LECO
states as follows:

On November 17, 2021, intervenor LECO filed a *Motion to Submit Expert
Testimony of José I. Alameda-Lozada, Ph. D.* On February 17, 2022, LUMA filed a
Motion to Strike Portions of the Expert Testimony of José Alameda-Lozada. LUMA's

motion concerns Dr. Alameda's response to the question: "What concerns do you have about LUMA, LUMA's contract, and LUMA's performance to date?"¹

None of the four reasons that LUMA presents to strike parts of Dr. Alameda's answer are valid. As detailed further below, Dr. Alameda is well qualified to answer the question, from the perspective of an economist with decades of experience evaluating the energy sector and the work of labor unions within the energy sector, as well as experience analyzing recent Public-Private Partnerships in Puerto Rico. PREB must allow the full answer into the record and consider LUMA's performance to date on its contract as a critical factor to determine the penalties and incentives to apply to LUMA's performance going forward.

First, LUMA objects that the question is a compound question.² LUMA does not, and cannot, provide any legal basis to object to a compound question in written pre-filed direct testimony.

Dr. Alameda's answer first states that numerous Puerto Rican organizations have protested that the LUMA contract is one-sided in favor of LUMA and against Puerto Rican customers. Dr. Alameda cites four different organizations that have made declarations supporting Dr. Alameda's statement:

¹ LECO, Expert Testimony Of José Alameda-Lozada On Behalf Of Local Environmental And Civil Organizations at p. 21, Nov. 17, 2021 [Hereinafter, "*Alameda Testimony*"] <https://energia.pr.gov/wp-content/uploads/sites/7/2021/11/Motion-to-Submit-Expert-Testimony-NEPR-AP-2020-0025.pdf>

² LUMA, Motion to Strike Portions of the Expert Testimony of José Alameda-Lozada, para. 6, Feb. 17, 2022 [Hereinafter, "*Motion to Strike*"]. [Motion-to-Strike-Portions-of-the-Expert-Testimony-of-Jose-Alameda-Lozada-NEPR-AP-2020-0025.pdf](https://energia.pr.gov/wp-content/uploads/sites/7/2022/02/Motion-to-Strike-Portions-of-the-Expert-Testimony-of-Jose-Alameda-Lozada-NEPR-AP-2020-0025.pdf)

- Unión de Trabajadores de la Industria Eléctrica y Riego de Puerto Rico (UTIER)³
- Colegio de Abogados y Abogadas de Puerto Rico⁴
- Colegio de Ingenieros y Agrimensores⁵
- Centro para la Nueva Economía⁶

By mentioning or citing statements from these organizations, Dr. Alameda is not claiming to be "an authorized representative" of those organizations as LUMA argues.⁷ Experts routinely cite literature, publications, and news articles to support their points. This renders LUMA's second objection invalid.

³ “Hemos radicado esta demanda a nivel federal para que se declare nulo este contrato por ser ilegal, leonino y por violar las leyes de Puerto Rico y de Estados Unidos. Bien hemos visto, y ha salido a la luz pública en las investigaciones realizadas en la Legislatura, que la contratación de LUMA Energy es perjudicial para el pueblo de Puerto Rico”, explicó Ángel Figueroa, presidente de la UTIER. See, EFE, *UTIER pide en el foro federal anular el contrato con LUMA*, (April 20, 2021) <https://www.efe.com/efe/usa/puerto-rico/utier-pide-en-el-foro-federal-anular-contrato-con-luma/50000110-4516737>

⁴ “El análisis del contrato por diferentes entidades locales e internacionales ha determinado que el contrato solo beneficia a LUMA y en nada a la AEE ni al Pueblo de Puerto Rico, por lo que se trata de un contrato leonino que en nuestro ordenamiento jurídico es nula y sin validez jurídica. Además, el contrato representa una carga extremadamente perjudicial para el Pueblo de Puerto Rico.” Resolución Numero 9; 20 de febrero de 2021; Colegio de Abogados y Abogadas de Puerto Rico, Junta de Gobierno; p. 7. See, UTIER, *Colegio de Abogados y Abogadas de Puerto Rico rechaza contrato de LUMA Energy*, (Feb. 26, 2021) <https://www.utier.net/post/colegio-de-abogados-y-abogadas-de-puerto-rico-rechaza-contrato-de-luma-energy>

⁵ Tras la presentación de una amplia ponencia, el ingeniero Juan F. Alicea Flores, presidente del CIAPR, aseguró que algunas condiciones del contrato de LUMA no protegen adecuadamente el interés público. “Por esa razón, el Colegio no avala el mismo, tal y como fue negociado”, añadió. See, Puerto Rico Posts, *Colegios de Ingenieros y Abogados levantan banderas sobre contrato de LUMA Energy* (March 19, 2021), <https://puertoricoposts.com/colegios-de-ingenieros-y-abogados-levantan-banderas-sobre-contrato-de-luma-energy/>

⁶ “In the final analysis, we cannot advocate in favor of maintaining an environmentally harmful and economically unsustainable government-owned enterprise in charge of our power system. Yet, while we strongly favor the thorough transformation of PREPA, the proposed O&M Agreement is critically deficient in several key areas.” See, Sergio M. Marxuach, *The PREPA-LUMA Agreement* (March 18, 2021) <https://grupocne.org/2021/03/18/the-prepa-luma-agreement/>

⁷ to be clear, Dr. Alameda can speak on behalf of UTIER, as his client in this proceeding.

Dr. Alameda next testifies that:

A [Public-Private Partnership] should include main principles such as transparency, accountability, and sustained partnerships. LUMA has consistently disagreed to a full public disclosure of documents, information, and process, even though it has been financed by public appropriations. The partnership must include a Reward – Penalty Scheme in order to ensure that the private entity is accountable to the public, and practices financial and technical responsibility.⁸

LUMA does not object to admission of this testimony into the record.⁹

Following that, Dr. Alameda testifies that " The [Public-Private Partnership] between LUMA and PREPA-Commonwealth Government allows Pass-Through Expenditures, which do not provide adequate limits on many of LUMA's operational expenditures."¹⁰

Placing limits on LUMA's operational expenditures is a central issue of this proceeding. PREB will be considering penalties and incentives designed to induce LUMA to keep the company's operating expenditures within the annual budget. If Pass-Thru Expenditures are not appropriately limiting LUMA's spending, then PREB should apply stricter penalties and more difficult-to-achieve incentives on LUMA's budget. Discussion of operating expenditures is relevant to examination of the budget metrics to be applied to LUMA, and therefore Dr. Alameda's statement on operating expenditures is relevant in this proceeding.

⁸ Alameda Testimony at p.22.

⁹ LUMA Motion to Strike at para. 15.

¹⁰ Alameda Testimony at p. 22.

Next, Dr. Alameda testifies that

Puerto Rico's Laws are currently based on a solid unionized workforce to help rebuild the energy grid. The PPP contract called for eliminating many labor protections, including existing labor unions, that protect wages and benefits and pensions. This is an unsound management decision. LUMA's new agreements exclude established unions, and LUMA's new agreements do not provide the same worker protections or compensation.¹¹

For support, Dr. Alameda cites a publication from Tom Sanzillo of the Institute for Energy Economics and Financial Analysis.¹²

LUMA's workforce lacks the required number of personnel and the necessary experience to operate the T&D system reliably, due to the company's decisions not to honor the collective bargaining agreement and to cut employee benefits from its budget. LECO's response to LUMA-LECO-IRIZARRY-ROI-01-59 includes numerous news articles describing the decline in service since LUMA's takeover.¹³ As those articles explain, LUMA's unilateral cost-cutting measures to eliminate labor protections affect LUMA's budget, the safety of LUMA's workers, the safety of the public, and the reliability of the grid. All of those issues are directly relevant to metrics and Performance Incentive Mechanisms being discussed in this proceeding.

¹¹ Alameda Testimony at p. 23.

¹² Mr. Sanzillo's paper, pp. 33-36, explains why LUMA's shabby treatment of unions will harm Puerto Rico's electric grid: "UTIER and the professional staffs of PREPA have served the authority well, particularly during periods of acute stress from weather events. While Puerto Rico's political leadership failed, PREPA's leadership failed and PREPA's generation system failed, UTIER's employees showed up for work. Union jobs with good salaries and benefits also are scarce on Puerto Rico and represent an important element of the island's shrinking middle class. Employees live on the island, raise families and spend money in Puerto Rico. The elimination of UTIER and its collective bargaining agreement is another self-inflicted wound to the Puerto Rico economy." <https://ieefa.org/wp-content/uploads/2020/10/Contract-with-LUMA-Energy-Sets-up-Full-Privatization-Higher-Rates-October-2020.pdf>; <https://ieefa.org/wp-content/uploads/2020/10/Luma-AEE-Contract-Report-IEEFA-ESP-October-2020.pdf>

¹³ A true and accurate copy of the response is attached as Exhibit 1.

In sum, LUMA's operating expenditures and LUMA's cuts in budgeting for labor protections are both relevant to this proceeding, and Dr. Alameda's well-supported statements on those topics are therefore admissible to the record. This renders LUMA's third objection invalid. LUMA motion paras. 8-9.

Dr. Alameda is well qualified to discuss the economic effects of the LUMA contract, because he has decades of experience observing and writing about such economic effects. In fact, Dr. Alameda has coauthored various studies and reports related to the energy sector and workers' benefits. For example, in 2017, Dr. Alameda published a paper for UTIER evaluating the possible impact of a reduction in union members' marginal benefits. Dr. Alameda's analysis included economic welfare; factors needed to sustain workers' motivation and productivity; reduction of marginal benefits versus a salary raise; salary adjustment due to increases in living costs; and finally the relationship between labor rights and a decrease in workforce.¹⁴

In 2018, Dr. Alameda conducted further analysis regarding the privatization of Puerto Rico's electric grid. Dr. Alameda conducted a study of proposed legislation that sought to privatize PREPA's assets and to establish a public-private partnership for the transmission and distribution of energy¹⁵. The study concluded that the proposed bills were not aligned with public energy policy and were (1) detrimental to public welfare and (2) represented a threat to the local economy and

¹⁴ Analisis de la propuesta sobre salarios y beneficios marginales a empleados de la UTIER. 22 Ago. 2017 Jose Alameda & Alfredo Gonzalez.

¹⁵ Analisis del Impacto Socioeconomico del Proyecto del Senado 860 y C. de R. 1481: La Transformacion del Sistema Electrico de PR. 27 abril 2018 . Jose Alameda & Alfredo Gonzalez.

its residents. To achieve said conclusion Dr. Alameda thoroughly studied other jurisdictions with a history of deregulation and privatization.

In sum, Dr. Alameda is more than qualified to testify on the economic effects of LUMA's contract provisions regarding operating expenditures and labor due to his decades as a leading economist in Puerto Rico along with his experience in energy issues, and specific experience on Public-Private Partnerships as well as labor practices in the energy sectors. Dr. Alameda's knowledge and experience render LUMA's last objection invalid.¹⁶

Finally, Dr. Alameda testifies that:

In accordance with the Agreement, the Operator LUMA is entitled to receive a Service Fee consisting of (1) an annual Fixed Fee and (2) an Incentive Fee. The Fixed Fee starts at \$70 million on year 1 and increases to \$105 million for each of years for 4 through 15. There should be a corresponding level of penalties if LUMA fails to provide adequate performance. The Incentive Fee, which is payable upon LUMA achieving certain performance benchmarks set forth in Annex IX to the O&M Agreement and is calculated in accordance with the methodology set forth in Annex X to the O&M Agreement, starts at \$13 million on year 1 and increases up to \$20 million for each of years 4 through 15. Again, there should be a corresponding level of penalties if LUMA fails to provide adequate performance.

LUMA does not object to admission of this testimony into the record.¹⁷

In addition to the substantive reasons laid out above, LUMA's Motion fails procedurally because it is based on the Puerto Rico Rules of Evidence, which apply to civil court proceedings, rather than Regulation 8543, which lays out the

¹⁶ LUMA Motion to Strike at para. 10.

¹⁷ LUMA Motion to Strike at para. 15.

standards that govern PREB adjudicative proceedings. In a footnote, LUMA acknowledges that under Regulation 8543, Chapter II, Article II, Section 2.01, those Rules do not apply to administrative proceedings such as these, with exceptions where the agency exercises discretion and issues a supplemental order.¹⁸ LUMA's motion does not give any reasons why PREB should issue such an order. The Rules of Evidence allow exclusion of evidence, in part, to prevent lay juries from being prejudiced. That policy consideration is wholly absent in proceedings before a specialized administrative body such as the Energy Bureau. Ultimately, LUMA disagrees with Dr. Alameda's description of LUMA and LUMA's performance, but dislike of the opinions of an expert is not a valid basis for excluding those opinions. Dr. Alameda's opinion is well-supported by his expertise and experience, as well as literature and third-party statements. The Energy Bureau should therefore deny LUMA's Motion to Strike.

Respectfully submitted. In San Juan Puerto Rico, March 9 , 2022.

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¹⁸ LUMA Motion to Stike, at n. 1.

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CERTIFICATION OF SERVICE

I hereby certify that on March 9, 2022, I served this Response 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
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Exhibit 1

REQUEST #: LUMA-LECO-IRIZARRY-ROI-01-59

State the basis for your statement on page 29, lines 4-5 of your testimony that “many Puerto Ricans have been forced to replace food or medicine that spoiled when refrigerators were unpowered.” Please provide any data, statistics, or documents that support your statement.⁵⁴ Please provide a list of the publications, handbooks, manuals, thesis, articles, reports, or studies you reviewed on what you describe as a system where customers can obtain restitution for financial losses caused by problems with a transmission and distribution system of an electric utility company at any time prior to submitting your testimony.

RESPONDER:

Agustín Irizarry-Rivera

RESPONSE:

Please see the following:

1. **‘Why Don’t We Have Electricity?’: Outages Plague Puerto Rico**
 - a. Mazzei, Patricia
 - b. New York Times, Late Edition (East Coast); New York, N.Y. [New York, N.Y]. 19 Oct 2021.
 - c. <https://www.nytimes.com/2021/10/19/us/puerto-rico-electricity-protest.html>
 - d. Notable passages:
 - i. “Many Puerto Ricans are diabetic and need refrigerated insulin to survive. The coronavirus pandemic has also put some people on respiratory therapies requiring electrical power at home for oxygen machines. Some Puerto Ricans are still studying or working at home.”
 - ii. “Ashlee Vega, who lives in northwestern Puerto Rico, said the power fluctuations this month were so imperceptible that it took her several hours to realize her appliances were not working right. The new refrigerator she had bought in February — to replace an old one that gave out after enduring years of volatile electrical surges — was fried.”
2. **‘We want sun’: the battle for solar power in Puerto Rico**
 - a. Lakhani, Nina
 - b. The Guardian, Guayama and Adjuntas, Puerto Rico, 18 Oct 2021

- c. <https://www.theguardian.com/environment/2021/oct/18/puerto-rico-solar-power-climate-resilience>
- d. Notable passages:
 - i. “On bad days, when coal ash hovers in the air over the community, Velázquez finds it hard to stop wheezing and needs an electric-powered nebulizer machine to open up her airways. The anxiety of losing power has gone since she was selected for the rooftop project.”
 - ii. “It has been hard to expand the business as frequent power cuts force him to close the store and also damage the fridges, which are costly to repair. But six months ago Hernández obtained a grant for solar panels, and then used his savings to buy the other equipment. Since then, he has had uninterrupted power and his electricity bill has fallen drastically, allowing him to hire an employee. “It’s given me a sense of tranquillity. It’s exciting, I can now expand and invest in my future.”

3. Blackouts have worsened since LUMA’s arrival, a company document confirms

- a. Mercado, Alivan Martinez
- b. Centro de Periodismo Investigativo, 30 Sept 2021
- c. [https://periodismoinvestigativo.com/2021/09/blackouts-have-worsened-since-lumas-arrival-a-company-document-confirms/Notable passages:](https://periodismoinvestigativo.com/2021/09/blackouts-have-worsened-since-lumas-arrival-a-company-document-confirms/Notable%20passages)
- a. Notable passages:
 - i. “At the Farmacia Cintrón, also located in the Utuado urban center, they had a power generator programmed to turn on automatically when there was a blackout. Because they are so frequent, the machine is now activated manually, to prevent it from turning on at night when the power goes out, so they do not run out of diesel.”

4. Puerto Rico Grid Privatization Flaws Highlighted in First Two Months of Operation

- a. Cathy Kunkel & Tom Sanzillo
- b. Institute for Energy Economics and Financial Analysis; August 2021
- c. [http://ieefa.org/wp-content/uploads/2021/08/Puerto-Rico-Grid-Privatization-Flaws-Highlighted-in-First-Two-Months-of-Operation August-2021.pdf](http://ieefa.org/wp-content/uploads/2021/08/Puerto-Rico-Grid-Privatization-Flaws-Highlighted-in-First-Two-Months-of-Operation-August-2021.pdf)
- d. Notable passages:
 - i. “In early August, the Independent Consumer Protection Office said it had received about twice as many monthly complaints

under LUMA than it had when PREPA managed the grid; the complaints have been primarily related to service disruptions and equipment damaged by voltage fluctuations.”

5. Massive power outage in Puerto Rico affects hundreds of thousands amid growing outrage

- a. CBS News, AP, 16 June 2021
- b. <https://www.cbsnews.com/news/puerto-rico-power-outage-latest-2021-06-16/>
- c. Notable passages:
 - i. “The latest outage unleashed a flood of complaints on social media as anger spread among thousands of people who were forced to throw out food and refrigerated medication including insulin in recent days. Some also complained about damaged appliances as lights flickered on and off since Thursday's outage that left 900,000 people in the dark.”
 - ii. “She and her family already had spent two days without electricity when Thursday's massive outage hit, adding that they have had to adjust their budget and buy gasoline to keep their generator going.”
 - iii. “The outages have been so constant lately that several mayors have declared states of emergency and handed out generators and ice to those most in need, as well as hired private crews to restore power after saying that Luma informed them they lacked enough brigades.”

6. Two major power outages in a week fuel fear in Puerto Rico – and memories of Hurricane Maria

- a. María Luisa Paúl
- b. The Washington Post; 18 June 2021
<https://www.washingtonpost.com/nation/2021/06/18/puerto-rico-power-outages/>
- c. Notable passages:
 - i. “Irizarry worried for his safety as he hurried through his hometown — known as the “city of the sleeping giant” in reference to the rolling mountains nearby — while also fretting over food left in the fridge and the growing list of appliances lost to unexpected voltage changes.”
 - ii. “Irizarry said the latest electrical woes have made him feel forgotten. The outages have reduced the hours his business is

able to operate. The unreliable electricity damaged the freezer where he stored pizza ingredients.”

- iii. ““We are talking about scenarios where voltage changes have been dramatic and they have destroyed medical equipment and burned down houses,” he said. “The Monacillos explosion — the nucleus of the energy distribution system — is like a culmination of the technical incompetence of this company.”
- iv. “Almost automatically she reached over to turn on the battery-powered fan she bought after Hurricane Maria left her in the dark for months. Part of her was eerily accustomed to Puerto Rico’s blackouts; but she also grew anxious thinking about what would happen if another storm struck the island. “We have Hurricane Maria PTSD,” or post-traumatic stress disorder, Santiago said. “These past massive outages have given me flashbacks from Maria, and I feel like I’m living through it again — sitting at home unable to work, not eating because I’m afraid of spoiling the food inside the fridge.”

7. PRCC Says Selective Power Outages Hinder Economic Development

- a. Newsroom, The Weekly Journal; 2 Sept, 2021
- b. https://www.theweeklyjournal.com/business/prcc-says-selective-power-outages-hinder-economic-development/article_47c4971e-0c0d-11ec-976c-bf484fbbee0c.html
- c. Notable passages:
 - i. ““We are greatly concerned about what is happening on the island with the selective blackouts and a request for an increase in the electric power service, due to the instability that this represents in the environment of doing business in Puerto Rico. The high energy cost for merchants makes it unfeasible to maintain a solid operation and adversely affects the viability of our jurisdiction as an optimal place to do business,” Gierbolini said.”

8. Power outages in Puerto Rico fuel anger, fear

- a. Yacob Reyes
- b. Axios; 3 Oct, 2021
- c. <https://www.axios.com/power-outages-puerto-rico-fc757495-6b0c-47d3-87c3-aa800e458f33.html>
- d. Notable passages:
 - i. “Every time the power goes out here it pushes your post-traumatic stress button,” Manuel Casellas, an attorney who

recently served as president of an 84-unit condominium complex, told AP. "You can't live without electricity."

- ii. "This has turned into abuse," said Carmen Cabrer, a 53-year-old Puerto Rico resident, about the outages, per AP. "I'm constantly tense."

9. Puerto Ricans March to Protest Ongoing Power Outages After Privatization of Electric Grid

- a. DemocracyNow!; 18 Oct, 2021
- b. https://www.democracynow.org/2021/10/18/headlines/puerto_ricans_march_to_protest_ongoing_power_outages_after_privatization_of_electric_grid
- c. Notable passages:
 - i. "Residents of the island say the power cuts have damaged appliances and can be life-threatening to those who rely on certain medical machines."

10. Four years after Maria, Puerto Rico's power grid still in shambles

- a. Johnny Irizarry Rojas
- b. Orlando Sentinel; 22 Sept, 2021
- c. <https://www.orlandosentinel.com/opinion/guest-commentary/os-op-puerto-rico-power-grid-in-shambles-20210922-w6cwdrgrgwfzrb25ruylhigsmystory.html>
- d. Notable passages:
 - i. "The list of recent incidents includes massive power outages and an increase in power surges. These, along with daily complaints of citizens' damaged equipment, are some examples of the company's inability to manage a complex system."

Please also refer to Dr. Alameda's testimony regarding outage compensation.