

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

IN RE: PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: Motion to Compel ICPO to
Respond to LUMA's Requests.

RESOLUTION AND ORDER

I. Introduction

On March 3, 2022, LUMA Energy, LLC and LUMA Energy ServCo, LLC, appearing jointly as "LUMA," filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Motion to Compel Discovery from The Independent Consumer Protection Office* ("Motion to Compel"). LUMA stated that it served its First and Second Set of Interrogatories and Request for Production of Documents to the Independent Consumer Protection Office ("ICPO") on December 3, 2021 and December 28, 2021, respectively.

Dissatisfied with the responses to the First and Second Set of Interrogatories and Request for Production of Documents notified by the ICPO on December 15, 2021 and January 18, 2022, respectively, on January 27, 2022, LUMA sent the ICPO a Meet and Confer Letter expressing the instances in which LUMA considered the ICPO's responses to have been insufficient and requesting supplemented responses from the ICPO. LUMA requested that the supplemented responses be notified by ICPO within five (5) days.

According to the Motion to Compel, on January 31, 2022, an attorney for LUMA held a telephone conference with Hannia B. Rivera Díaz (Rivera Díaz), the ICPO's Director, and Pedro E. Vázquez Meléndez (Vázquez Meléndez), an attorney for the ICPO. On February 8, 2022, the ICPO notified its response to LUMA's Meet and Confer Letter.

LUMA argues in the Motion to Compel that the ICPO's responses to the First and Second Set of Interrogatories and Request for Production of Documents and to the Meet and Confer Letter are insufficient, that its efforts to obtain the supplemental answers requested have been fruitless, and that it is harmed by the ICPO's opposition to further supplement its responses to LUMA's discovery requests.

Therefore, LUMA requested the Energy Bureau to compel supplemental responses and the production of additional documents from the ICPO to interrogatories 01-07, 01-08, 01-11, 01-13 and requests 02-02, 02-03, 02-04, and 02-05 for "information related to attorney Beatriz González's professional background and prior experience as a witness." LUMA further requested the Energy Bureau to compel supplemental response from the ICPO to interrogatories 01-37 and 01-38 and requests 02-07, 02-15, 02-16, 02-17, 02-18, 02-19, 02-20, and 02-22 for information "related to the basis of attorney Beatriz González's testimony as representative of the ICPO" pursuant to Section 8.03(F) of Regulation 8543.¹

II. Background

On April 23, 2021, the ICPO filed before the Energy Bureau a document titled *Notice of the ICPO's Intervention*² ("Notice of Intervention"). Through its Notice of Intervention, the ICPO stated that the grounds for requesting intervention in the instant case is the authority

¹ Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings, December 18, 2014.

² The ICPO's Notice was filed in Spanish and titled *Escrito Notificando la Intervención de la OIPC* ("Notificación de Intervención").



delegated by Section 6.42 of Act 57-2014,³ that entitles it to participate or appear as an intervening party in any matter that may affect consumers in its capacity as spokesperson and advocate for them, including matters related to the quality of electric service, the services of electric companies to their customers, resource planning, public policy and any other matter of interest to the client.⁴

Upon review of the ICPO's request for intervention, on May 7, 2021, the Energy Bureau issued a Resolution and Order⁵ with a determination that, pursuant to Act 57-2014, the ICPO is a *de jure* intervening party in adjudicative proceedings before the Energy Bureau. The Energy Bureau reasoned that Section 3.5 of Act 38-2017⁶ states that any person having a legitimate interest in an adjudicatory procedure before an agency may file a written, duly grounded application to intervene or participate in the procedure. That Section 5.05 of Regulation 8543 states that any person with legitimate interest in a case before the Energy Bureau may present a duly grounded petition to intervene or participate in said case, and that the Energy Bureau shall evaluate and attend to the petition according to the criteria established in Act 38-2017.

In view of the ICPO's legal mandate to appear as an intervening party in any adjudicative procedure that may affect consumers of electric power services in Puerto Rico, Act 57-2014 exempts the ICPO from having to argue the criteria that the Energy Bureau applies the determining whether to grant or deny a petition for intervention at Section 3.5 of Act 38-2017.⁷

The Energy Bureau will consider the statutory basis of ICPO's standing to intervene, its mission, as established at Section 6.40 of Act 57-2014,⁸ and its enumerated powers and duties at Section 6.42, Section 6.4 of Act 57-2014, establishing the jurisdiction of the Energy Bureau, Section 1.05⁹ of Regulation 8543 that sets the standard of interpretation of Regulation 8543, Section 2.01 of Regulation 8543 on the applicability of the Rules of Civil Procedure and the Rules of Evidence, and Sections 8.01 and 8.03 of Regulation 8543 on Disclosure of Evidence. These provisions shall be weighed against the rights asserted by LUMA in relation to the discovery process and the harm that LUMA argues it is caused as a result of the ICPO's responses to its discovery requests.

III. LUMA's Request to Compel Supplemental Responses Based on Its Right to Discover Information Related to Attorney Beatriz González's Professional Background and Prior Experience as a Witness

³ Known as the Puerto Rico Energy Transformation and RELIEF Act, as amended.

⁴ *Id.*, Section 6.42 subsection (c).

⁵ Resolution and Order, *In Re: Performance Targets for LUMA Energy ServCo, LLC*, Case No. NEPR-AP-2020-0025, May 7, 2021.

⁶ Known as Uniform Administrative Procedures Act of the Government of Puerto Rico as amended.

⁷ Original titled in Spanish as "Resolución y Orden". Resolution and Order, *In Re: Performance Targets for LUMA Energy ServCo, LLC*, Case No. NEPR-AP-2020-0025, May 7, 2021 ("May 7 Resolution and Order").

⁸ Section 6.40 subsection (a) of the Puerto Rico Energy Transformation and RELIEF Act, as amended, establishes, in part, that "The Independent Consumer Protection Office, hereinafter the 'Office' or 'ICPO,' is hereby created to educate, advise, assist, and represent customers of the services under the jurisdiction of the Puerto Rico Public Service Regulatory Board."

⁹ Section 1.05 - Interpretation. This regulation shall be interpreted in a manner that promotes the best public interest of the residents of Puerto Rico. Moreover, it shall be construed to secure a just, speedy, and inexpensive determination of all proceedings.



On November 17, 2021 the ICPO filed the testimony of Attorney Beatriz P. González Álvarez ("González Álvarez").¹⁰ González Álvarez's testimony was given as a witness for the ICPO.¹¹ González Álvarez is a licensed attorney and an independent contractor.¹² LUMA's First and Second Set of Interrogatories and Request for Production of Documents were answered by González Álvarez pursuant to Section 8.03 of Regulation 8543 on Interrogatories which establishes that written interrogatories are *"to be answered by the party to whom it is addressed, or if it is a public or private corporation, or a partnership, association or government agency, by any authorized representative, who shall provide all information that is available to the party."*

Before addressing and transcribing each interrogatory and requests for documents that LUMA requests that the ICPO be compelled to answer, LUMA states its general objections to how much the ICPO has partaken in the discovery, and basis for its requests to compel. It is LUMA's contention that ICPO is obligated and has failed to discover information of González Álvarez's professional background and experience beyond that attorney's *curriculum vitae*.¹³ LUMA further contends that "[i]nsofar as Mrs. González is the ICPO's representative in connection with this proceeding, LUMA is entitled to discover information regarding her professional background such as the areas in which her legal practice is focused and any other experience that may be relevant to assess her qualifications and the basis for her testimony."¹⁴ LUMA asserts that what is requested is "basic information" and the ICPO's objections to the discovery requests are "unfounded."¹⁵ LUMA also argues that from ICPO's responses to its First Set of Interrogatories and Request for Production of Documents, it learned that González Álvarez "has been qualified as an expert witness in at least one judicial proceeding" and that the ICPO has not disclosed the case in which González Álvarez was qualified as an expert witness, in violation of LUMA's right to obtain that information.

1. LUMA's Interrogatories No. 01-07, 01-08, 01-11, and 01-13 and requests 02-02 and 02-03

LUMA's Interrogatories No. 01-07, 01-08, 01-11, and 01-13 and requests 02-02 and 02-03 all relate to specific aspects of González Álvarez's professional trajectory before and after joining the ICPO as an independent contractor in 2020. Even though González Álvarez answered LUMA's First and Second Sets of Interrogatories and Request for Production of Documents as the ICPO's authorized representative to answer written interrogatories, as per section 8.03 of Regulation 8543, interrogatories No. 01-07, 01-08, 01-11, and 01-13 and requests 02-02 and 02-03 are all directed to González Álvarez as an individual and not to the ICPO, through González Álvarez as its representative. The Energy Bureau will, nonetheless, address each one of LUMA's claims and requests individually.

ICPO refers to González Álvarez as an "outside contractor"¹⁶ in various instances throughout its Motion to Compel and it is unclear whether this is just a translation inaccuracy or if the

¹⁰ Independent Consumer Protection Office's Written Testimony – Attorney Beatriz P. González Álvares, *In Re: Performance Targets for LUMA Energy ServCo, LLC*, Case No. NEPR-AP-2020-0025, November 17, 2021 ("November 17 Testimony").

¹¹ *Id.*, p. 3.

¹² *Id.*

¹³ LUMA's Motion to Compel Discovery from the Independent Consumer Protection Agency, *In Re: Performance Targets for LUMA Energy ServCo, LLC*, Case No. NEPR-AP-2020-0025, March 3, 2022 ("March 3 Motion to Compel"), pp. 3-4.

¹⁴ *Id.*, p. 4.


¹⁵ *Id.*

¹⁶ González Álvarez stated that her employment is as a "contratista independiente" or independent contractor and not as a "contratista externa" or external contractor. Independent Consumer Protection Office's Written Testimony – Attorney Beatriz P. González Álvarez, *In Re: Performance Targets for LUMA Energy ServCo, LLC*, Case No. NEPR-AP-2020-0025, November 17, 2021 ("November 17 Testimony") p. 3. We acknowledge, however, that the term "asesora legal externa," or external legal advisor, is used by ICPO to describe González Álvarez in its response to LUMA's First Set of Interrogatories and Request for Production of Documents notified by the ICPO on December 15, 2021. The Energy Bureau does not consider that there is a significant difference



emphasis is made to support conducting discovery about González Álvarez by suggesting a distinction between an independent contractor and a regular employee. LUMA asserts that it has a right to discover information related to González Álvarez's professional background and prior experience as a witness. The Energy Bureau notes, however, that González Álvarez is a witness only to the extent that she is the ICPO's appointed representative through which the government entity appears in this proceeding and answers interrogatories and other forms of discovery.

Because González Álvarez is ICPO's appointed representative through which ICPO will or may appear at any instance in these proceedings, the Energy Bureau fails to see what right LUMA is asserting as the basis for interrogatories No. 01-07, 01-08, 01-11, and 01-13 and requests 02-02 and 02-03 of its Motion to Compel. What these interrogatories and requests have in common is that they all treat González Álvarez as the object of discovery. While this clearly would not raise concerns if the discovery requests pertained to someone that intends to be used as an expert witness, when directed at the appointed representative of a government agency with a *de jure* mandate to appear before the Energy Bureau in any proceeding like the captioned case, the Energy Bureau, in pursuing its obligations within an adjudicative process, must ensure proper scrutiny of the discovery requests, what they are likely to achieve, and whether they advance or hinder the Energy Bureau's duty to conduct a just, speedy and inexpensive determination of all proceedings.

The parties in proceedings before administrative agencies do not have an unrestricted right to assess the credentials of another party's appointed representative as part of the adjudicative process and any organization or legal entity with involvement has the exclusive prerogative to select the officer or representative through which they will appear. If González Álvarez is the employee or officer appointed by the ICPO to appear on its behalf in the instant case, it is within the ICPO's authority and discretion to make the appointment. As an entity of the Commonwealth of Puerto Rico, the ICPO must appoint an officer to be the individual that appears on its behalf, without that appointment being subject to review and scrutiny by other parties. The Energy Bureau needs to be mindful not to create new controversies within the ones before the Energy Bureau for adjudication and to not lose focus of the purposes of discovery within administrative proceedings and the correct extent of the applicability of the Rules of Civil Procedure and the Rules of Evidence to the captioned case and any other case before the Energy Bureau.

a. LUMA's Interrogatory No. 01-07

Interrogatory No. 01-07 is a request for González Álvarez to disclose the case or cases in which she has represented a consumer against the Puerto Rico Electric Power Authority ("PREPA") with a description of the subject matters and controversies involved in the case or cases. ICPO objected LUMA's Interrogatory No. 01-07 as vague and imprecise but responded that González Álvarez had represented consumers before the Puerto Rico Electric Power Authority before commencing her employment with ICPO and in her role as a legal advisor for ICPO. ICPO reaffirmed the objection in its supplemental responses to LUMA's interrogatories and requests for production of documents and produced no further detail pertaining to any case or cases in which González Álvarez had appeared on behalf of consumers before PREPA.

between the terms independent contractor and external contractor. The nature of the professional relationship between the ICPO and González Álvarez is not what determines the capacity in which she is involved in the proceedings before the Energy Bureau. Whether González Álvarez is an independent contractor of the ICPO, or a salaried employee, is not the appropriate criteria to establish if she, as an individual, can be the object of discovery. This being the case, LUMA's emphasis on González Álvarez employment as a contractor or an advisor of the ICPO does not sway the Energy Bureau in any direction in the review and analysis of LUMA's requests.

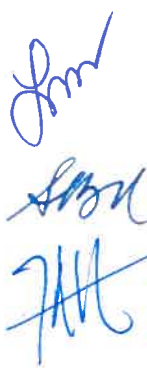


The Energy Bureau does not consider that the ICPO has provided LUMA an “unfounded objection,”¹⁷ has “outright declined to supplement” the information requested,¹⁸ or that ICPO’s responses and supplemental responses are “patently insufficient.”¹⁹ The Energy Bureau does agree, however, with LUMA’s assertion that “[t]he objections raised by the ICPO to these Requests are inapplicable.”²⁰ While the ICPO objected LUMA’s Interrogatory No. 01-07 as vague and imprecise, the Energy Bureau is of the opinion that the interrogatory is irrelevant because González Álvarez answered LUMA’s First and Second Sets of Interrogatories and Request for Production of Documents as the ICPO’s authorized representative to answer written interrogatories, as per section 8.03 of Regulation 8543.

Upon review of the above information, the Energy Bureau **DETERMINES** that ICPO answered Interrogatory No. 01-07 and that ICPO’s accompanying objections to further supplementing the response are valid. Therefore, LUMA’s March 3 Motion to Compel is **DENIED IN PART** regarding LUMA’s Interrogatory No. 01-07.

b. LUMA’s Interrogatory No. 01-08

LUMA’s interrogatory No. 01-08 requests information of instances in which González Álvarez has represented a consumer in a case against LUMA and the subject matter and controversies of any such case. The ICPO objected the interrogatory based on being vague and imprecise but responded that González Álvarez had represented consumer(s) against LUMA as part of her duties as the ICPO’s legal advisor. The ICPO reaffirmed its objections in its supplemental response to the interrogatory. LUMA asserts that all terms and the timeframe applicable to the information requested was clarified through the Meet and Confer Letter.²¹

LUMA considers that the ICPO has “evaded to answer the question by raising an unfounded objection for vagueness,”²² that it is “obstructing the discovery of information that would clarify the basis of attorney González’s testimony,”²³ and that ICPO’s objections are “in order to evade its duty to disclose this information.”²⁴ The Energy Bureau understands that parties treat discovery as a contentious exercise, even in adjudicative proceedings before administrative agencies. That notwithstanding and given the Energy Bureau’s duty to oversee adjudicative proceedings that seek to resolve controversies in an efficient, collaborative, and expeditious manner, the Energy Bureau must discourage too much reliance on hyperbolic language and gratuitous attacks against other parties across the board. The Energy Bureau takes extremely seriously its obligation to review all evidence objectively and without bias or passion and give it the appropriate weight in this proceeding and because of the evidence’s ability to contribute to carrying out the Energy Bureau’s adjudicative mission so it is transparent, truthful, objective, and fair.

While ICPO objected LUMA’s Interrogatory No. 01-08 as vague and imprecise, the Energy Bureau is of the opinion that the interrogatory is irrelevant because González Álvarez answered LUMA’s First and Second Sets of Interrogatories and Request for Production of Documents as the ICPO’s authorized representative to answer written interrogatories, as per section 8.03 of Regulation 8543. Because the capacity in which she is involved, the Energy Bureau does not see the relationship between LUMA’s interest in discovering information about González Álvarez’s “qualifications to render the testimony she has offered which

¹⁷ March 3 Motion to Compel, p. 4.

¹⁸ *Id.*, p. 2.

¹⁹ *Id.*

²⁰ *Id.*, p. 8.

²¹ *Id.*, p. 8.

²² *Id.*, p. 9.

²³ *Id.*

²⁴ *Id.*



relates to the customer satisfaction metric”²⁵ and the capacity in which she appears. Because any representation González Álvarez may have provided in cases brought by a consumer against LUMA would have been in her capacity as an employee of the ICPO and it is the ICPO that represented a consumer in a case or cases against LUMA, the question arises as to whether LUMA may already possess that information.

Unless LUMA can articulate and substantiate a compelling reason as to why the inability to review the ICPO’s decisions in its selection of representative, and how that would prevent the Energy Bureau from carrying out its adjudicative duties in an unencumbered manner that leads to the expeditious, just, and efficient adjudication of the matters under its jurisdiction, the Energy Bureau is unconvinced that LUMA does possess the right it claims to conduct more expansive discovery into the credentials and professional trajectory of González Álvarez who, as an individual, is not the object of discovery.

As it pertains to the ICPO and the fact that while the disagreements pertaining to LUMA’s discovery requests revolve primarily around González Álvarez as an individual rather than around the ICPO as a governmental entity and despite the objections it raised, whether or not ICPO possesses an inventory of the instances in which it has represented customers in claims against LUMA in pursuit of its statutory mission and delegated responsibilities, remains unanswered.

Upon review of the above information, the Energy Bureau **DETERMINES** that the ICPO answered Interrogatory No. 01-08 from LUMA’s First Set of Interrogatories and Request for Production of Documents. The Energy Bureau further determines that the ICPO has not established whether it possesses files, inventories or other data that would allow it to provide LUMA with a list of cases in which the ICPO has represented customers against LUMA and, if it does, if there are any impediments to its disclosure. Therefore, LUMA’s March 3 Motion to Compel is **DENIED IN PART and GRANTED IN PART** regarding LUMA’s Interrogatory No. 01-08. The ICPO is ordered to respond to whether in its organizational capacity, it possesses and is in a position to disclose, the evidence where the ICPO has represented customers in claims against LUMA.

c. LUMA’s Interrogatory No. 01-11

LUMA’s interrogatory No. 01-11 demands information from González Álvarez as to whether she has testified as a witness in judicial, administrative, or regulatory proceedings and requests that all cases or proceedings in which she may have done so be disclosed. The ICPO objected the interrogatory based on relevance and reaffirmed the objection in its supplemental responses, adding that the information requested would not disqualify her from appearing as a witness of the ICPO.

LUMA counters this objection with a general argument to the effects that “the ICPO is curtailing LUMA’s ability to defend its position in this proceeding insofar as LUMA would not have access to information that might be relevant for purposes of cross-examination and other forms of impeaching attorney González.”²⁶ The Energy Bureau is unconvinced. The request is unduly broad and information as to every and all instances in which González Álvarez may have appeared as a witness regardless of forum, subject matter, capacity, or reason seems very unlikely to reveal any relevant and admissible evidence.

The Energy Bureau reiterates that González Álvarez’s involvement is as the appointed representative of a government entity and not as a party, expert witness or other capacity that would, arguably, make her the object of discovery. LUMA’s admission that it requires the information to be able to impeach González Álvarez concerns the Energy Bureau, particularly vis-à-vis the likelihood of the discovery resulting in any evidence and the statutory basis of the ICPO’s duty to seek standing as an intervening party in this proceeding and any other before the Energy Bureau as a government agency with the express mandate to look after and represent the interests of electric service consumers in Puerto Rico.

²⁵ *Id.*, p. 8.

²⁶ *Id.*, pp. 9-10.



Upon review of the above information, the Energy Bureau **DETERMINES** that ICPO's objections to Interrogatory No. 01-11 and to further supplementing the response are valid. Therefore, LUMA's March 3 Motion to Compel is **DENIED IN PART** regarding LUMA's Interrogatory No. 01-11.

d. LUMA's Interrogatory No. 01-13

LUMA's interrogatory No. 01-13 demands information from González Álvarez as to whether she has been qualified as an expert witness in a case or proceedings in the past and requests that the cases in which she may have done so be disclosed. The ICPO responded that González Álvarez was qualified as an expert witness in the past in Family Law but objected the second part of the interrogatory based on relevance. In its supplemental response, the ICPO reaffirmed its objection and added that any reference to González Álvarez having been qualified as an expert witness in past proceedings does not disqualify her as the ICPO's witness in the instant case.

Because González Álvarez has not been announced by the ICPO as an expert witness and can be considered a witness only if she is the appointed representative of a legal entity or government agency, González Álvarez's experience as an expert witness is not relevant to the matters before the Energy Bureau. The ICPO's response that González Álvarez had been qualified as an expert witness in the past but in Family Law, clarifies that the evidence requests lacks relevance. Because González Álvarez will not be appearing as an expert witness or an individual in this proceeding, LUMA has not properly articulated any convincing argument as to why it should be allowed to discover this information that is more likely to not produce any relevant or admissible evidence. What's more, because González Álvarez has not been announced by the ICPO as an expert witness, LUMA has not shown why assessing her qualifications and any experience as an expert witness is needed and warranted to challenge her qualifications and impeach her testimony through cross-examination or otherwise.

Upon review of the above information, the Energy Bureau **DETERMINES** that ICPO answered No. 01-13 of LUMA's First Set of Interrogatories and Request for Production of Documents and that the ICPO's objections to further supplementing the response are valid. Therefore, LUMA's March 3 Motion to Compel is **DENIED IN PART** regarding LUMA's Interrogatory No. 01-13.

e. LUMA's Requests No. 02-02 and 02-03

LUMA's requests for production of documents No. 02-02 and 02-03 ask the ICPO to describe González Álvarez's specific practice areas of Civil Law and her role as an expert witness in family law, respectively. Both requests were objected by the ICPO as irrelevant and, in supplementing the initial responses, the ICPO further stated that any references to González Álvarez's areas of legal practice and role as an expert witness in Family Law would not disqualify her as a witness for the ICPO in the instant case.

González Álvarez is involved in this proceeding only in her capacity as the ICPO's appointed representative. Never has the ICPO announced, referred to, or portrayed González Álvarez as a subject matter expert in relation to the matters subject to adjudication before the Energy Bureau. González Álvarez is, by the very nature of her appointment as the representative of a government entity, a spokesperson through which the ICPO provides information, produces evidence, and makes requests if they relate to this proceeding, subject to disclosure and within the parameters of the ICPO's mission and delegated duties and responsibilities. As we have said before above, González Álvarez is not a party or appearing as an individual or an expert witness and she is not the object of discovery.

Upon review of the above information, the Energy Bureau **DETERMINES** that the ICPO answered LUMA's request for production of documents No. 02-03 of LUMA's Second Set of Interrogatories and Request for Production of Documents and that the ICPO's objections to answer request No. 02-02 and supplementing the response to requests No. 02-02 and 02-03 are valid. Therefore, LUMA's March 3 Motion to Compel is **DENIED IN PART** regarding LUMA's Requests No. 02-02 and 02-03.



f. LUMA's Requests No. 02-04 and 02-05

Requests No. 02-04 and 02-05 of LUMA's Second Set of Interrogatories and Request for Production of documents ask how many informal complaints and how many formal complaints González Álvarez has managed as legal counsel to the ICPO, respectively. The ICPO objected request no. 02-04 based on vagueness and because LUMA failed to define the term "managed." In its supplemental response, the ICPO added an objection based on being overbroad and because it didn't limit the timeframe of the requested information. Request no. 02-05 was initially objected for being too vague, failing to define and translate the term "formal complaints," and failing to define the term "managed." The supplemental response to request no. 02-05 objects the requirement based on being overbroad because it fails to limit the timeframe of the requested information.

LUMA argues that the terms objected to were clarified through the Meet and Confer Letter and are otherwise obvious self-defining.²⁷ Regardless of whether the ICPO was duly put in a position to understand the scope and answer LUMA's requests, the requests refer specifically and exclusively to the number of complaints that González Álvarez has handled or "managed" in her employment with ICPO. The requests, without having to enter to discuss whether they are or are not vague and overbroad, are irrelevant to the instant case since González Álvarez was appointed as the ICPO's representative in this proceeding to talk for the ICPO.

The Energy Bureau understands that the requests are outside of the scope of discovery in the captioned matter and that the requests needed to be made to the ICPO and not González Álvarez and regarding the number of complaints that the ICPO has "managed" in carrying out its mission, duties, and responsibilities. Hence, the Energy Bureau cannot agree with LUMA that the ICPO is "obstructing the discovery of information that would clarify the basis of attorney González's testimony"²⁸ or "evading its duty to disclose."²⁹ The Energy Bureau reason is that the requests are improperly directed at González Álvarez and not the ICPO and information and documents specific to one employee within an agency regardless of that individual acting as the agency's authorized representative, and not the agency are outside of the scope of this case and suspect.

The focus on González Álvarez as the object of discovery in lieu of the government entity that sought and obtained the right to intervene seems like a misuse of the opportunities to bring new and potentially relevant information for the Energy Bureau to review and consider in the adjudicative process.

Upon review of the above information, the Energy Bureau **DETERMINES** that the ICPO's objections to requests No. 02-04 and 02-05 are valid. Therefore, LUMA's March 3 Motion to Compel is **DENIED IN PART** regarding LUMA's Requests No. 02-04 and 02-05.

2. *LUMA's Request to Compel Supplemental Responses Related to the Basis of Attorney Beatriz González's Testimony as Representative of the ICPO*

LUMA presents a second category of objections to the ICPO's responses to its discovery requests composed of information "related to the basis of attorney Beatriz González's testimony as representative of the ICPO." What interrogatories 01-37 and 01-38 and requests 02-07, 02-15, 02-16, 02-17, 02-18, 02-19, 02-20, and 02-22 have in common is that they ask González Álvarez for information and documents that pertain to the ICPO and, when the responses provided refer to the experiences, impressions, knowledge and conclusions of the agency resulting, as explained in the ICPO's responses and objections, in the knowledge acquired and accumulated through the day to day operations of the ICPO and all individuals that work with that agency in any capacity, LUMA deems these unacceptable because they either don't refer specifically to González Álvarez or the names, titles, and job duties of each

²⁷ *Id.*, p. 9.

²⁸ *Id.*

²⁹ *Id.*



individual at ICPO that could share in that accumulated knowledge, perceptions, and experiences are not mentioned.

To the interrogatories and requests that LUMA includes in this Motion to Compel and that could be relevant because they refer to duties and responsibilities that the ICPO is actually charged with and not to those that are under the jurisdiction of other agencies or entities, including LUMA itself, the ICPO consistently explained that the responses are based on the experience accumulated by the ICPO in the daily performance of its duties. LUMA argues however, that González Álvarez testified on subjects on which LUMA then based both its sets of Interrogatories and Request for Production of Documents and the ICPO refused to identify with sufficient specificity the information on which the testimony was based. We note, once more, that the November 17 Written Testimony was the testimony of the ICPO, through its authorized representative, González Álvarez. The Energy Bureau is not going to immediately discard any testimony because it is based on agency expertise or experience. Instead, the Energy Bureau will consider any information, testimony and documents and give it the evidentiary weight it may merit.

a. LUMA's Interrogatories No. 01-37 and 01-38

In interrogatories No. 01-37 and 01-38, LUMA asks for data, statistics or documents that support two statements made by the ICPO, through González Álvarez in the November 17 Written Testimony. The first one pertains to the assertion that "other issues such as lack of street lighting and/or lack of electrical service may also result in the filing of a complaint before the Energy Bureau, but the latter is rare." The second one is a statement to the effects that "claims for damages to domestic appliances due to voltage fluctuations are an example of complaints that never reach the Energy Bureau because the process, as established by the utility, does not provide for it."

To both interrogatories the ICPO responded that the statement is supported by the experience obtained by that office in the daily performance of its duties. Having been asked to supplement the initial responses, ICPO referenced its answers to the First Set of Interrogatories and Request for Production of Documents where it described the daily duties and responsibilities of González Álvarez's employment with ICPO and identifies it as the source of the experience obtained and drawn from for the testimony submitted in this process. In its supplemental response to interrogatory no. 01-38, the ICPO adds that PREPA's procedures require a consumer to use the courts if they are dissatisfied with any determination made by the utility in claims for damages to electrical appliances.

The Energy Bureau is concerned with LUMA's approach by moving to compel additional responses to interrogatories no. 01-37 and 01-38. The ICPO clarified it in its supplemental response that their initial response is a matter of public record and that PREPA's procedures preempt any claim regarding damage to electrical appliances from reaching the Energy Bureau. LUMA's insistence on supporting data, statistics, or documents on something that is a matter of public record within an entity other than the ICPO is unwarranted.

In interrogatory No. 01-37, the ICPO responded that although issues such as lack street lighting and/or lack of electrical service can result in filing complaints with the Energy Bureau, the practice is, as a matter of the ICPO's operational reality, actually rare. The ICPO has explained that while it is not unheard of and it is not precluded from taking such action, complaints for the two stated issues are something that they are not called upon to do often. If the ICPO has explained that, as a consumer protection agency, filing complaints for lack of street lighting or lack of electrical service is something they, as an entity, rarely do, the Energy Bureau is not convinced that data, statistics or documents how uncommon this is within the totality of the day to day activities of the ICPO and in the performance of their specific duties and responsibilities, is critical to LUMA or to relevant information that LUMA can reasonably expect to obtain from González Álvarez instead that from the ICPO. Note that LUMA asserts that "attorney González failed to provide adequate basis,"³⁰ not the ICPO.

³⁰ *Id.*, p. 11.



It seems to the Energy Bureau that further pursuit of data, statistics, or documents about a process not within the purview of the ICPO's duties and responsibilities and another that is a rare occurrence is unlikely to discover relevant and admissible evidence that could affect the resolution of the captioned case to LUMA's advantage. It appears like it is more an effort to make showing relentlessness in discovery by LUMA, which can hardly be aligned with the guiding principles of efficiency and expediency of the administrative adjudicative process.

Upon review of the above information, the Energy Bureau **DETERMINES** that the ICPO answered LUMA's interrogatories No. 01-37 and 01-38 of LUMA's First Set of Interrogatories and Request for Production of Documents and that the objections supplementing the response to interrogatories No. 01-37 and 01-38 are valid. Therefore, LUMA's March 3 Motion to Compel is **DENIED IN PART** regarding LUMA's Interrogatories No. 01-37 and 01-38.

b. LUMA's Requests No. 02-07 and 02-15

LUMA references interrogatories 19, 22, 25, 26, 28, 30, 31, 40, 42, 43, 44, 48, 49, and 50 in requesting that the ICPO explain what it means by "the experience obtained by our office in the daily performance of its duties." The ICPO is also asked to indicate whose experience and functions the ICPO is referring to, including the names of the persons and their positions. The ICPO, in its response, states it provided consumers with certain protections and services and that results in their continuous interaction with all types of consumers that go to the ICPO seeking its services for any issue they may have before the utility. It is that process of daily performance of its duties, according to the ICPO, that builds the expertise on the issues addressed in the testimony. As to the request for the names, positions, and duties of the ICPO's employees, the ICPO references LUMA's own definition of the term "your" included in the interrogatories and that it refers to the intervening party, the ICPO, and includes all consultants, contractors, agents, and representatives. Based on the definition, the ICPO objects LUMA's request for names, positions, and functions as irrelevant because the request was addressed to the ICPO and therefore, already includes all individuals within the entity.

While LUMA perhaps did not expect to be bound by its own definition, the Energy Bureau is not convinced that, under different circumstances, the names, titles, and positions requested would be relevant and not fall within LUMA's definition of "your." Thus, the ICPO's response is just barely sufficient. The matter is that all the interrogatories referenced were directed to the ICPO and that the ICPO responded as an entity. In this proceeding, the Energy Bureau must warn against the potential excesses of falling into the temptation of demanding the names of all the employees of a small consumer protection agency and then possibly attempting to discover the knowledge, thoughts, and opinions of each individual therewith. In every other context, the request to compel fails based on relevance.

Upon review of the above information, the Energy Bureau **DETERMINES** that the ICPO answered LUMA's Requests 02-07 and 02-15 of LUMA's Second Set of Interrogatories and Request for Production of Documents and that the objections supplementing the response to Requests No. 02-07 and 02-15 are valid. Therefore, LUMA's March 3 Motion to Compel is **DENIED IN PART** regarding LUMA's Requests No. 02-07 and 02-15.

c. LUMA's Request No. 02-16

To the request of data or documents pertaining to orientations provided to energy customers and that resulted in customers filing a complaint with the Energy bureau, including the day, month and year of the orientations, subject matter and the case name assigned by the Energy Bureau to the complaints that, as per LUMA, are the basis of the responses to interrogatories number 27 and 33. The ICPO responds denying having referenced any documents in its response to those interrogatories and that the responses are based on the ICPO's experience in performing its duties continuously.

Now, while the ICPO is technically correct in that documents of the orientation and guidance it provides energy customers that contact their office with grievances related to electric power provision and related services, did not need to be reviewed by ICPO in preparing its responses to interrogatories which drew only from the agency's expertise and organizational



knowledge, data, statistics or intake records kept or generated by the ICPO in relation to the number of customers it assists by providing orientation and guidance, even if they don't result in the filing of any complaints and are subject to be disclosed could, arguably, be of some relevance to LUMA or this proceeding.

Upon review of the above information, the Energy Bureau **DETERMINES** that the ICPO answered LUMA's Request 02-16 of LUMA's Second Set of Interrogatories and Request for Production of Documents and that the objections supplementing the response to request No. 02-16 are valid. Therefore, LUMA's March 3 Motion to Compel is **DENIED IN PART** regarding LUMA's Request 02-16.

d. LUMA's Requests No. 02-17, 02-18, 02-19 and 02-20

LUMA's requests 02-17 to 02-20 are identically structured and request three things, two of which are the same through the four requests:

Request 02-17 asks the ICPO: 1) how many claims the ICPO reviewed or considered in connection with its testimony; 2) that were filed by consumers against LUMA for high electricity consumption; 3) including case numbers assigned by the Energy Bureau to the claims before they were the basis of a complaint.

Request 02-18 refers to: 1) the claims that the ICPO is aware; 2) and asks it to indicate how many involved PREPA verifying a meter reading consumption within acceptable parameters; 3) and to provide the number assigned by the Energy Bureau to each claim that eventually resulted in a complaint.

Request 02-19 also pertains to: 1) the claims that the ICPO is aware; 2) it is asked to indicate how many involved LUMA verifying a meter reading consumption within acceptable parameters; 3) and to provide the number assigned by the Energy Bureau to each claim that eventually resulted in a complaint.

Request 02-20 is about: 1) the claims that the ICPO knows; 2) how many involved advising a customer of their electricity consumption, with separate numbers pertaining to PREPA and to LUMA; 3) with the number assigned by the Energy Bureau to each claim that eventually resulted in a complaint.

To request No. 02-17, the ICPO responded that it did not review or consider any such documents to provide its November 17 written testimony, which is based on agency expertise and organizational knowledge alone. To requests 02-18 to 02-20, the ICPO answered that the first part of all requests is information under LUMA's control. As to the second element of requests 02-18 to 02-20, the ICPO affirmed they are not legally authorized to represent consumers before PREPA or LUMA and, as a result, the ICPO does not possess the data requested nor does it have any reason to gather and produce it. ICPO's response is the same to the third element of requests 02-17 to 02-20 where it states they ignore what LUMA is referring to when it asks for Energy Bureau case numbers. In supplementing the initial responses to requests 02-18 to 02-20, the ICPO reaffirms that the answers are based on agency expertise and that all knowledge possessed by González Álvarez results from her employment with the ICPO and references the duties of her position as legal advisor.

Evidence already within a party's possession is outside the scope of discovery. LUMA has articulated no serious objections or material doubts as to the veracity of the ICPO's responses, nor has it denied having the evidence it is requesting.

Upon review of the above information, the Energy Bureau **DETERMINES** that the ICPO answered LUMA's Requests No. 02-17 to 02-20 of LUMA's Second Set of Interrogatories and Request for Production of Documents and that the objections supplementing the responses to requests No. 02-17 to 02-20 are valid. Therefore, LUMA's March 3 Motion to Compel is **DENIED IN PART** regarding LUMA's Requests No. 02-17 to 02-20.



e. LUMA's Requests No. 02-22

In its final objection to the ICPO's responses to its discovery requests, LUMA references the ICPO's response to interrogatory No. 01-33 stating that a requested number of formal or informal objections or complaints is information under LUMA's control and asks if, to prepare for its testimony, the ICPO reviewed any complaints filed by customers before the Energy Bureau, with a list of such complaints and the case number assigned by the Energy Commission.

The ICPO initially responded that no such documents were reviewed in preparation to respond to any interrogatories and, in its supplemental response, the ICPO reaffirms that the answer to the request and previously to interrogatory No. 01-33, are based on agency expertise and that all knowledge possessed by González Álvarez results from her employment with the ICPO and references the duties of her position as legal advisor.

The Energy Bureau restates that evidence already within a party's possession is outside the scope of discovery. LUMA has articulated no serious objections or material doubts as to the veracity of the ICPO's responses, nor has it denied having the evidence it is requesting.

Upon review of the above information, the Energy Bureau **DETERMINES** that the ICPO answered LUMA's Request No. 02-22 of LUMA's Second Set of Interrogatories and Request for Production of Documents and that the objections supplementing the response to request No. 02-22 are valid. Therefore, LUMA's March 3 Motion to Compel is **DENIED IN PART** regarding LUMA's Request No. 02-22.

IV. Conclusion

Consistent with the determinations made in Part III of this Resolution and Order, the Energy Bureau **ORDERS** the ICPO to provide, **on or before May 20, 2022**, a suitable response to LUMA's Interrogatory No. 01-08.

Be it notified and published.


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner


Sylvia B. Ugarte Araujo
Associate Commissioner



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on May 13, 2022. Chairman Edison Avilés Deliz and Associate Commissioner Ángel R. Rivera de la Cruz did not intervene. I also certify that on May 13, 2022 a copy of this Resolution and Order was notified by electronic mail to margarita.mercado@us.dlapiper.com, yahaira.delarosa@dlapiper.com, jmarrero@diazvaz.law, kbolanos@diazvaz.law, hrivera@jrsp.pr.gov, contratistas@jrsp.pr.gov, agraitfe@agraitlawpr.com, rstgo2@gmail.com, pedrosaade5@gmail.com, flcaseupdates@earthjustice.org, rolando@bufete-emmanuelli.com, notificaciones@bufete-emmanuelli.com, jessica@bufete-emmanuelli.com, rhoncat@netscape.net, lvelez@earthjustice.org; rmurthy@earthjustice.org and I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today May 13, 2022.



Sonia Seda Gaztambide
Clerk

