

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 Strike Portions of
Expert Testimony of Dr. Agustín Irizarry-
Rivera.

RESOLUTION AND ORDER

I. Introduction

On March 22, 2022, 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, Sierra Club and its Puerto Rico chapter, and Unión de Trabajadores de la Industria Eléctrica y Riego (collectively, "LECO") filed a document titled *Motion to Submit Expert Testimony* through which LECO submitted the *Expert Testimony of Agustín A. Irizarry-Rivera on Additional Performance Targets on Behalf of Local Environmental and Civil Organizations*, supplementing and/or revising Agustín Irizarry-Rivera, Ph.D. ("Dr. Irizarry") pre-filed expert testimony as to matters related to the additional performance targets. Dr. Irizarry's supplemental expert testimony discusses whether the Energy Bureau should set metrics on energy customers' access to information.¹

On May 11, 2022, LUMA Energy, LLC ("ManagementCo") and LUMA Energy ServCo, LLC ("Servco"), (jointly referred to as "LUMA"), filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Motion to Strike Portion of the Expert Testimony of Agustín Irizarry-Rivera* ("Motion to Strike"). LUMA requests that Dr. Irizarry's recommendation that metrics be implemented on customers' access to information be stricken from the record and asserts that the recommendation falls outside the scope of the supplemental testimony authorized by the Energy Bureau's December 22 Resolution and Order² but limited to the additional performance targets.³

At the heart of the requests made by LUMA in the *Motion to Strike* is the Energy Bureau's December 22, 2021, *Resolution and Order* ("December 22 Order") establishing performance targets for Interconnection, Energy Efficiency/Demand Response, and Vegetation Management as a way of encouraging LUMA to undertake the work necessary to achieve specific energy policy goals. Procedurally, the December 22 Order authorized the Intervenors in this case to conduct additional discovery and provide revised testimony limited to matters related to Interconnection, Energy Efficiency/Demand Response, and Vegetation Management.⁴

On May 23, 2022, LECO opposed LUMA's Motion to Strike by filing a document titled *Response to LUMA's Motion to Strike Portions of Expert Testimony of Agustín Irizarry-Rivera* ("LECO's Response") in which LECO alleges that the Puerto Rico Rules of Evidence are not to

¹ See, LECO's Motion to Submit Expert Testimony, Expert Testimony of Agustín A. Irizarry-Rivera on Additional Performance Targets on Behalf of Local Environmental and Civil Organizations, *In re: Performance Targets for LUMA Energy SERVCO, LLC*, Case No. NEPR-AP-2020-0025, March 22, 2022 ("Supplemental Expert Testimony from Agustín Irizarry-Rivera".)

² See, Resolution and Order *In re: Performance Targets for LUMA Energy SERVCO, LLC*, Case No. NEPR-AP-2020-0025, December 22, 2021, ("December 22 Resolution")

³ See, LUMA's Motion to Strike Portion of the Supplemental Expert Testimony of Agustín Irizarry-Rivera, *In re: Performance Targets for LUMA Energy SERVCO, LLC*, Case No. NEPR-AP-2020-0025, May 11, 2022 ("May 11 Motion to Strike".)

⁴ See Resolution and Order, *In re: Performance Targets for LUMA Energy SERVCO, LLC*, Case No. NEPR-AP-2020-0025, December 22, 2021 ("December 22 Resolution").

be strictly enforced in administrative proceedings and claims that the connection between customer access to information, energy efficiency, and demand response is widely recognized throughout the energy industry.

On June 23, 2022, LUMA filed a document titled *Reply to the Response to LUMA's Motion to Strike Portion of the Supplemental Expert Testimony of Agustín Irizarry-Rivera* ("June 23 Motion"), in which LUMA alleges reinstates that Dr. Irizarry is proposing a new metric that is outside the scope of the December 22 Order and that the Rules of Evidence provide an appropriate framework to serve as guidance to the Energy Bureau in deciding on the fairness of allowing the disputed testimony.

Thus, for the Motion to Strike to be granted, LUMA must have established, and the Energy Bureau must be convinced, that metrics on customers' access to information about their energy consumption fall outside the parameters of a performance target specifically addressing energy efficiency and demand response.

II. The Energy Bureau's Regulation 8543 and the Supplemental Applicability of the Rules of Evidence

The Puerto Rico Energy Bureau's Regulation 8543⁵ provides, at Section 2.01, that "*the Rules of Evidence may apply, in a supplemental manner to this Regulation, in any judicial proceeding before the [Energy Bureau] when, in the exercise of its discretion to handle cases before it, the [Energy Bureau] determines it by way of an order.*"

For the Energy Bureau to exercise its discretion for ordering the supplemental applicability of the Rules of Evidence as per Regulation 8543 and therefore, to the captioned case, it must be persuaded so doing would promote the best public interest for the residents of Puerto Rico and that it would more likely support a just, speedy, and inexpensive process to determine the facts and adjudicate the controversies present in this proceeding.⁶

LUMA supports the Motion to Strike with arguments that take for granted that the Energy Bureau has issued an order pursuant to Section 2.01 of Regulation 8543 and sets forth, as the legal basis of its arguments related to pertinence, scope, expert witness qualifications, and admissibility of expert testimony, Rules 401, 402, 403, 702, and 703 of the Puerto Rico Rules of Evidence. The Energy Bureau has not issued an order allowing for the supplemental applicability of the Rules of Evidence to this case. LUMA did not request a Section 2.01 order in its Motion to Strike and the Energy Bureau does not consider that the matters brought before it by LUMA and its arguments in support thereof, justify the required exercise of discretion by the Energy Bureau to issue such an order *motu proprio*.

The Energy Bureau will consider the merits of LUMA's allegations and resolve them pursuant to Regulation 8543.

III. LUMA has Failed to establish why the Energy Bureau should override the longstanding Rules Applicable to Administrative Proceedings contained in the Uniform Administrative Procedures Act

In support of its request that expert testimony provided by Dr. Irizarry recommending metrics on energy customers' access to information be stricken from review by the Energy Bureau, LUMA argues that the matter requires "the evaluation of whether the probative value of the evidence is substantially outweighed by several factors that include the danger

⁵ Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings, December 18, 2014 ("Regulation 8543").

⁶ Puerto Rico Energy Bureau's Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings, December 18, 2015 ("Regulation 8543") Article I, 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.*



of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”⁷

Besides quoting and restating Rule 403,⁸ LUMA has articulated no specific assertions as to how Dr. Irizarry’s expert opinion and recommendation would create a danger that the Energy Bureau be unfairly prejudiced, confused, or mislead in evaluating and weighting the evidence. While LUMA’s concerns are noted, its efforts to protect the Energy Bureau from exposure to expert testimony on its own field of subject matter expertise and delegated powers, are unwarranted.

Section 3.13(e) of the *Uniform Administrative Procedures Act of the Government of Puerto Rico* establishes that the “Rules of Evidence will not be applicable to administrative hearings, but the fundamental principles of evidence may be used to achieve a quick, fair and economic solution to the procedure.”⁹ The hallmark of administrative proceedings is the informality and flexibility at the very heart of its *raison d’être* and that is intended to put the trier of facts in a position to gain knowledge of all the information relevant to the adjudication.¹⁰ The intent of the Puerto Rico Legislative Assembly in creating this statutory principle, that has been discussed and applied on many instances by the Supreme Court of the Commonwealth of Puerto Rico is that “the fundamental purpose of adjudicative proceedings is the search for truth and justice.”¹¹ The legislator, therefore, meant with this rule to “free administrative proceedings from the procedural obstacles of the courts of justice.”¹²

Because the governing purpose of administrative proceedings is to discover the truth and impart justice in a manner that is efficient and swift, the rules in the Uniform Administrative Procedures Act of the Government of Puerto Rico¹³ are intended to make this guiding principle viable rather than thwart it,¹⁴ in its evaluation of evidence, including expert testimony, the Energy Bureau shall seek a full and true disclosure of the facts in a manner that does not unnecessarily prolong the proceeding or unduly burden the record or the parties.

Under Regulation 8543, specifically those at Article VIII, *Disclosure of Evidence*, Section 8.01, *General Standards*, discovery requests, as they pertain to expert witnesses, are circumscribed to:

- 4) The name and address of the expert witness the party to whom the request is made has consulted;
- 5) The name and address of the expert witness the party to whom the request is made intends to present in the administrative hearing, the subject matter said experts shall testify about, as well as a summary of their opinions and a brief statement on the theories, facts or arguments that support their opinions.¹⁵

⁷ May 11 Motion to Strike, at pp. 3 and 4.

⁸ *Id.*, at pp. 9 and 11.

⁹ Section 3.13(e) of the Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico (L.P.A.U.), 3 L.P.R.A. 2163(e).

¹⁰ See *Otero Mercado v. Toyota de Puerto Rico*, 163 D.P.R. 716, 733 (2005).

¹¹ *Torres Santiago v. Departamento de Justicia*, 181 D.P.R. 969, 1002 (2011); *Otero Mercado v. Toyota de Puerto Rico*, 163 D.P.R. 716, 733 (2005).

¹² *Oficina de Ética Gubernamental v. Rodríguez Martínez*, 159 D.P.R. 98, 112 (2003) (citing *Martínez v. Superior Court*, 83 D.P.R. 717, 720 (1961)).

¹³ Section 3.13(e) of the L.P.A.U., *supra*.

¹⁴ See, *Junta de Relaciones del Trabajo de Puerto Rico v. Autoridad de Comunicaciones de Puerto Rico*, 110 D.P.R. 879, 884 (1981); *Torres Santiago v. Departamento de Justicia*, 181 D.P.R. 969, 1002 (2011); *Otero Mercado v. Toyota de Puerto Rico*, *supra*.

¹⁵ Section 8.01(B)(4-5) of Regulation 8543 of the Puerto Rico Energy Bureau, *supra*.



When these standards for expert witness discovery are considered in unison with the letter and the spirit of Article I, Section 1.05 of Regulation 8543 fostering an interpretation that secures “a just, speedy, and inexpensive determination of all proceedings,”¹⁶ pertinent expert testimony is admitted when it will assist the Energy Bureau to understand the evidence or to determine a fact in issue. The Energy Bureau may rely upon the reasonable views of experts and, as the trier of fact, it may disregard an expert opinion if it finds the opinion unreasonable or not sufficiently useful to determining facts and the adjudication of controversies. In the exercise of its adjudicative powers, the Energy Bureau may rely on the reasonable opinions of qualified experts.

Substantive and procedural matters aside, LUMA’s Motion to Strike promotes precisely the obstacles that it purports to want to prevent: undue delays, time waste, or that the Energy Bureau be unfairly prejudiced, confused in regard to the issues before it, and mislead in its functions as the trier of facts.¹⁷ While LUMA’s Motion to Strike makes no precise, material, or substantiated actionable request based on the provisions of Regulation 8543, in urging that certain expert opinions be summarily removed from the record before the Energy Bureau can consider if they are useful to the determination of facts and the adjudication of controversies. Be it as it may, LUMA’s apprehension that the Energy Bureau stands to be prejudiced, confused, or misled by the expert opinions of Dr. Irizarry and thus must be precluded from considering them, is misplaced. Keeping the objected to expert opinions from consideration by the Energy Bureau is not equivalent to withholding them from the members of a jury.

IV. LUMA’s objections to Dr. Irizarry’s Expert Testimony and Opinions

Even though LUMA’s arguments in support of this Motion to Strike are based exclusively on a set of rules of evidence that do not apply to proceedings before the Energy Bureau, LUMA’s complaints and objections have been reviewed and considered by the Energy Bureau.

LUMA’s request that certain expert opinions expressed by Dr. Irizarry in LECO’s Supplemental Expert Testimony from Agustin Irizarry-Rivera, be stricken from consideration is based on the assertion that Dr. Irizarry had defined the scope of his supplemental expert testimony and subsequently proceeded to exceed this scope by answering the question “[d]o you also recommend that PREB set metrics on customers’ access to information?” According to LUMA, Dr. Irizarry’s supplemental expert testimony “included a statement recommending the Energy Bureau set metrics on customers’ access to information” and “proposed metrics on the number of customers able to access daily and hourly usage data and the percent of customers with access to hourly or sub-hourly usage data.”¹⁸ LUMA also objects to Dr. Irizarry’s expert opinion to the effect that “customers with information about usage can take advantage of demand response.”¹⁹

The objections described in the preceding paragraph are stated by LUMA pursuant to Rule 402 of the Puerto Rico Rules of Evidence. It is LUMA’s position that Dr. Irizarry’s opinion pertaining to metrics on customers’ access to information is impertinent on account of it allegedly exceeding the scope of the supplemental expert testimony and, upon applying Rule 402 of the Rules of Evidence must, therefore, be declared as inadmissible by the Energy Bureau. LUMA’s argument fails primarily as a matter of procedure and source of law because Rule 402 of the Rules of Evidence does not apply and its concept of pertinence conflicts with Section 3.13 of the Uniform Administrative Procedures for the Government of Puerto Rico Act and Article VIII, Section 8.01 of the Energy Bureau’s Regulation 8543.

Even though LUMA asserts that Dr. Irizarry’s testimony must be stricken from consideration because it exceeds the defined scope and is, therefore, impertinent, LUMA actually further argues its request to strike Dr. Irizarry’s supplemental testimony pursuant to Rules 702 and

¹⁶ Section 1.05 of Regulation 8543 of the Puerto Rico Energy Bureau, *supra*.

¹⁷ Motion to Strike, at pp. 3 and 4.

¹⁸ Motion to Strike, at p. 12.

¹⁹ *Id.*



703 of the Puerto Rico Rules of Evidence pertaining to the qualifications of an expert witness and the admissibility of expert testimony, respectively.²⁰

In referencing Rules 702 and 703, LUMA seems to suggest that Dr. Irizarry's knowledge and qualifications as an expert witness for LECO are at issue. Nevertheless, LUMA references Rules 702 and 703 as legal dispositions on which the Energy Bureau should base the exclusion of Dr. Irizarry's expert testimony but articulates no reasonable or persuasive argument to support it.

LUMA's contention, as repeated and paraphrased throughout the Motion to Strike, is that Dr. Irizarry "provides no objective basis or reference to information that can reasonably be linked to his assertion."²¹ LUMA believes that the alleged "lack of objective basis" justifies, or even demands, that LECO be sanctioned with the exclusion of the expert testimony that displeases LUMA. The main flaw in LUMA's reasoning, however, is that nothing in Article VIII of Regulation 8543 of the Energy Bureau supports this position or the penalties and exclusions system on which LUMA bases demands for relief is anathema to the fundamental purpose of administrative adjudicative proceedings which is the search for truth and justice through an efficient, fair, and economic process that doesn't encourage procedural obstacles and observes the letter and the spirit of the Uniform Administrative Procedures Act .

The argument repeated by LUMA that Dr. Irizarry's expert testimony and opinions lack basis, don't demonstrate that they are not "additional and redundant input into the Energy Efficiency/Demand Response performance metric area," and prevents its reliability from being assessed is unsubstantiated and contradicted by Dr. Irizarry's written testimony and his level of expertise and the concrete data from reputable sources and references to credible corroborative reports and publications in LECO's Response. Mere assertions by counsel cannot be accepted as evidence by the Energy Bureau.

Substantively, LUMA's arguments in support of this Motion to Strike also fail to convince the Energy Bureau that Dr. Irizarry's expert opinions should be stricken from consideration. LUMA contends that in the Supplemental Expert Testimony, Dr. Irizarry limited the scope of his expert testimony to assessing "the three additional categories of metrics that the Energy Bureau has set forth in this proceeding: interconnection of distributed solar & storage, energy efficiency & demand response, and vegetation management"²² but that his expert opinion that the Energy Bureau should set metrics on energy customers' access to information falls outside the scope of his supplemental testimony and of the parameters contained in the Energy Bureau's December 22 *Resolution and Order* limiting the disclosure of supplemented evidence to the additional performance targets.

LUMA's move to strike is based on a distinction that Dr. Irizarry's proposed metrics on the number of customers able to access daily and hourly usage data and the percent of customers with access to hourly or sub-hourly usage data, and his opinion that that customers with information about usage can take advantage of demand response are not within the additional performance incentive target area of energy efficiency and demand response established by the Energy Bureau by way of its December 22 Order. LUMA negates the existence of any relevant and measurable relationship between customers' access to information about their energy consumption and energy efficiency and affirms that Dr. Irizarry's expert recommendation "clearly falls outside the scope of the December 22nd Order."²³ A review of the record, of Act 17-2019, known as the "Puerto Rico Energy Public Policy Act," and the ample and credible data, studies and other literature available on the inversely proportional relationship between customer access to usage information and energy efficiency, proves otherwise.

Act No. 17-2019²⁴ establishes specific and concrete elements and goals that form Puerto Rico's Energy Public Policy and that acknowledge the longstanding relationship between customer access to information and energy efficiency. To further illustrate that the

²⁰ Motion to Strike, at pp. 6, 8, 9, 10, and 11.

²¹ *Id.*, at pp. 12, 14, and 16.

²² *Id.*, at p. 5.

²³ *Id.*, at p. 13.

²⁴ Puerto Rico Energy Public Policy Act ("Act 17-2019").



relationship that LUMA negates is an established principle in the energy sector, although the Energy Bureau may, at its discretion, rely on the credible statements and opinions of a qualified subject matter expert, at Section 1.5., 2050 Energy Public Policy, and Section 1.6., Initial Objectives, Act No. 17 includes examples the following relevant public policy objectives:

It is hereby declared as public policy of the Government of Puerto Rico:

(...)

2) Electric Power Service Model

(b) To oversee the implementation of strategies geared toward achieving efficiency in the generation, transmission, and distribution of electric power so as to guarantee the availability and supply thereof at an affordable, just, and reasonable cost;

(...)

(e) To establish an Electrical System model that maximizes the use of the energy resources available and that empowers the consumer to be part of the energy resources portfolio through the adoption of energy efficiency strategies, demand response, the installation of distributed generators, among others;

4) Energy Culture, Education, Research, and Development.

(a) To promote the responsible and effective use of energy resources in Puerto Rico by residential, commercial, and industrial customers;

(b) To make efforts to educate citizens and electric power service customers on energy efficiency consumption reduction, distributed generation strategies, and other available tools to empower consumers to have more control over their energy consumption;

(...)

5) Energy Generation, Efficiency, and Demand Response Programs.

(...)

(f) To establish demand response, demand-side management, and energy efficiency programs and strategies that take into account short-, medium-, and long-term goals and incentivize customers to become more energy efficient, with a focus that results in a reduction in costs and energy consumption, as well as greater stability and reliability;

(...)

10) Customer Service, Participation, and Transparency.

(a) To guarantee every consumer's right to receive a reliable, stable, and excellent electric power service at a cost that is accessible, just, and reasonable, a transparent and easy to understand bill, and a fast service response;

(...)

(c) To promote transparency and citizen participation in every process related to electric power service in Puerto Rico.

Section 1.6. — Initial Objectives.

The goal of the energy public policy is to achieve, among others, the following initial objectives:

1) To promote the fastest and most efficient reconstruction, modernization, and revamping of the transmission and distribution system for the purpose of developing a robust and flexible system that can integrate new technologies, distributed generation, renewable energy sources, and energy efficiency mechanisms as well as provide consumers with alternatives in the energy sector, thereby maximizing available state and federal resources.



(...)

4) To make it feasible for energy service consumers to become prosumers through programs such as the net metering program, the adoption of behind-the meter generation systems, among other mechanisms currently available or to be available in the future.

(...)

10) To promote demand response and energy efficiency programs with a defined timetable and incentives in order to make short-, medium- and long-term programs feasible, while stressing the benefits that such programs provide to consumers and the Electrical System

LUMA's allegations that Dr. Irizarry's expert testimony and opinions have no basis and fail to establish a relationship between customer usage information and energy efficiency, even if they found any support in Regulation 8543, which they don't, are amply contradicted by credible data, Puerto Rico's energy public policy, and other factual sources.

Finally, LUMA also includes in the *Motion to Strike* affirmations against Dr. Irizarry imputing the expert of deliberately withholding testimony and causing delays in the proceedings. LUMA states that Dr. Irizarry "had the opportunity to propound this new metric when he submitted his pre-filed direct testimony. However, he opted not to do so and now attempts to amend his direct pre-filed testimony via this supplemental testimony."²⁵ LUMA provides no evidence or corroboration to substantiate such a serious accusation and character attack on an expert witness. Mere assertions of counsel do not constitute evidence. It seems imperative to remind LUMA that Dr. Irizarry is not a party to this proceeding, only LECO is. Dr. Irizarry is an expert witness. LUMA has not stated how it came to know, to allege, that the witness Dr. Irizarry allegedly "opted" to withhold his testimony on the additional performance metrics or that the alleged "attempts to amend" the original expert testimony, by a witness, were meant to cause "unnecessary delay in the proceedings"²⁶ warranting exclusion from consideration by the Energy Bureau.

Besides unbecoming and unsubstantiated, LUMA's various timeline-related arguments²⁷ are superfluous to the matters before the Energy Bureau and there is no compelling or persuasive reason to address Dr. Irizarry's imputed intent or consider taking any action as a result thereof. LUMA's request that LECO be penalized, and the Energy Bureau be precluded from reviewing expert testimony, because LECO submitted at the appropriate time supplemental expert testimony that LUMA now claims could have been filed earlier is the overzealous tactics that the Energy Bureau has warned LUMA against.

The Energy Bureau issued the December 22 Order establishing performance targets for Interconnection, Energy Efficiency/Demand Response, and Vegetation Management authorized the Intervenors in this case to provide revised testimony limited to matters related to Interconnection, Energy Efficiency/Demand Response, and Vegetation Management. LECO's Supplemental Expert Testimony from Agustin Irizarry-Rivera was timely filed and complied with the December 22 Order that it be limited to the additional performance target areas.

LUMA claims that Dr. Irizarry "opted," a term that implies an act of volition, to withhold testimony. LUMA further claims that in providing the supplemental expert testimony promptly and not anytime before, Dr. Irizarry caused unnecessary delay in the proceedings and "should be stricken for being substantively and procedurally inappropriate."²⁸ LUMA in the Motion to Strike also argues that Dr. Irizarry's supplemental expert testimony "is

²⁵ Motion to Strike, at p. 15.

²⁶ *Id.*

²⁷ *Id.*, at pp. 15, 17, and 18.

²⁸ *Id.*, at p. 15.



untimely and threatens to delay the proceedings as it opens the door for further additional discovery to be conducted in relation thereto.”²⁹

The Energy Bureau, however, cannot ignore there is a certain irony to LUMA’s claims when made in a Motion to Strike critically procedurally flawed as it contains claims based on legal provisions not applicable to this matter. The instant Motion to Strike, devoid of any procedural or substantive merit is, in and of itself, an unnecessary delay in these proceedings. Also, LUMA’s attempt to make the Rules of Evidence applicable to the matter that inconveniences it has the purpose of opening the doors for additional discovery challenging the credentials of the expert witness and the content of the expert testimony with all the procedural burdens, delays, and expenses of judicial proceedings.

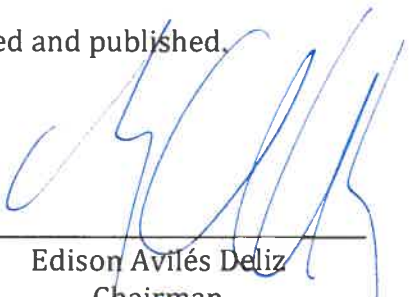
The Energy Bureau does not share LUMA’s view that LECO, in timely filing Dr. Irizarry’s compliant supplemental expert testimony “has deprived this forum of the objective basis by which his proposal could be adequately considered and its reliability assessed.”³⁰ The Energy Bureau, however, considers that, as a forum, it should not be deprived of considering what could be useful and informative testimony from a qualified subject matter expert that, at its discretion, the Energy Bureau can accept or reject in whole or in part. LUMA’s contention that the Energy Bureau is prejudiced by the filing and content of Dr. Irizarry’s supplemental expert testimony. As per the standards of evidence applicable to this proceeding, the Energy Bureau will determine, in due course, if Dr. Irizarry’s expert testimony may assist it in the determination of facts in issue and, as the trier of fact, may rely upon the reasonable views of the expert or disregard it if it finds the opinion unreasonable or not sufficiently useful to the determination of facts and the adjudication of controversies.

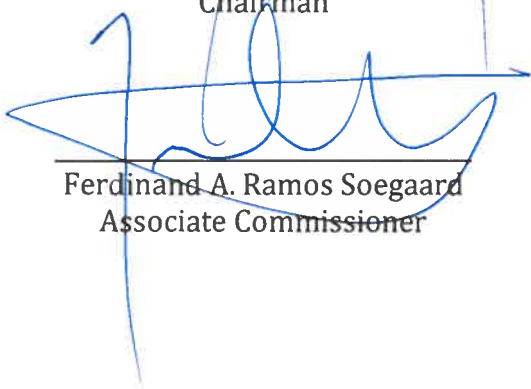
The Energy Bureau **DETERMINES** that Dr. Irizarry’s expert opinions contained at page 12, lines 1-11 of LECO’s March 22, 2022, *Supplemental Expert Testimony from Agustin Irizarry-Rivera*, are reasonably within the terms of the Energy Bureau’s December 22 Order establishing performance targets for Interconnection, Energy Efficiency/Demand Response, and Vegetation Management, his field of expertise, the scope of his testimony, and the provisions of Regulation 8543 on Disclosure of Evidence. Therefore, LUMA’s May 11, 2022’s *Motion to Strike* is **DENIED**.

V. Conclusion

In the exercise of its adjudicative powers, the Energy Bureau may rely on the reasonable opinions of qualified experts. Consistent with the discussion and determinations made in Parts II, III, and IV of this Resolution and Order, the Energy Bureau **DENIES** LUMA’s Motion to Strike.

Be it notified and published,


Edison Avilés Deliz
Chairman


Ferdinand A. Ramos Soegaard
Associate Commissioner


Lillian Mateo Santos
Associate Commissioner


Sylvia B. Ugarte Araujo
Associate Commissioner



²⁹ *Id.*, at p. 18.

³⁰ *Id.*, at p. 16.

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on July 7, 2022. I also certify that on July 7, 2022 a copy of this Resolution and Order was notified by electronic mail to the following: 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 July 7, 2022.



Wanda I. Cordero Morales
Interim Clerk

