

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. José Alameda-  
Lozada.

**RESOLUTION AND ORDER**

**I. Introduction**

On February 17, 2022, LUMA Energy, LLC., (“ManagementCo”) and LUMA Energy ServCo, LLC., (“ServCo”), (jointly “LUMA”) filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) a document titled *Motion to Strike Portions of the Expert Testimony of José Alameda-Lozada* (“Motion to Strike”). The expert in question, José Israel Alameda-Lozada, Ph.D. (“Dr. Alameda”), appeared as an expert Economist on behalf of the 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”). LECO opposed LUMA’s Motion to Strike on March 9, 2022, by filing a document titled *Response to LUMA’s Motion to Strike Portions of Expert Testimony of José Alameda* (“LECO’s Response”).

LUMA acknowledges Dr. Alameda’s *Curriculum Vitae* (“CV”), that accompanied his written testimony of November 17, 2021.<sup>1</sup> LUMA acknowledges Dr. Alameda’s detailing of his credentials and experience in the field of Economics and that the *Curriculum Vitae* provides information additional to what was detailed by Dr. Alameda in the written testimony.<sup>2</sup> The arguments that LUMA makes under the Puerto Rico Rules of Evidence in support of the Motion to Strike suggest that LUMA acknowledges that Dr. Alameda’s role in the captioned proceedings is that of an expert witness.

LUMA’s objections on which it bases its request that certain portions of Dr. Alameda’s expert testimony be stricken for the record are that his testimony and opinions do not remain strictly within the realm of “pure” or “abstract” Economics. According to LUMA, by applying his expertise and qualifications in Economics to economic issues related to the energy industry, regulatory frameworks, market-based incentives, and energy production and consumption, Dr. Alameda exceeds his area of expertise and provides testimony for which he is allegedly unqualified.

**II. The Credentials of José Israel Alameda-Lozada, Ph.D. and his Qualifications as an Expert**

On November 17, 2021, LECO filed a *Motion to Submit Expert Testimony* that included expert testimony from Dr. José Alameda-Lozada, an Economist, accompanied by his full CV.<sup>3</sup> A review of Dr. Alameda’s CV tell us that he is, in fact, highly qualified and possesses vast experience in the field of Economics.

In view of the foregoing, the Energy Bureau determines, therefore, as the basis of its analysis of LUMA’s other objections contained in the Motion to Strike, that Dr. Alameda is qualified to act as an expert in matters of the electric industry, environmental economics, energy economics, including energy resources and energy commodities, market structures and

<sup>1</sup> Motion to Strike, ¶ 1.

<sup>2</sup> Motion to Strike, ¶ 2.

<sup>3</sup> Motion to Submit Expert Testimony, *In Re: Performance Targets for LUMA Energy ServCo, LLC.*, Case No. NEPR-AP-2020-0025, November 17, 2022 (“November 17 Motion”).

regulatory structures, economic distributional impacts, economically efficient provision and use of energy commodities, resources and factors that lead away from economic efficiency, economic development and economic planning.

### III. Analysis

Noting that the Energy Bureau will take into consideration Section 1.05<sup>4</sup> of Regulation 8543 that sets the standard of interpretation of *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, and interpret this regulation “in a manner that promotes the best public interest of the Residents of Puerto Rico” and will “be construed to secure a just, speedy and inexpensive determination of all proceedings” and pursuant to Articles 6.3, 6.4, 6.20 and 6.25B of Act No. 57-2014, as amended, known as the “Puerto Rico Energy Transformation and RELIEF Act,” the Energy Bureau proceeds to adjudicate LUMA’s Motion to Strike.

#### A. Paragraphs nos. 3 to 5 of LUMA’s Motion to Strike

LUMA objects to Dr. Alameda’s expert testimony intended “to evaluate the possibilities of different scenarios or models of rewards and penalties to be established by the Puerto Rico Energy Bureau (‘PREB’) based on LUMA’s performance”<sup>5</sup> and his description, in the November 17, 2021 written testimony, of “two schemes that, in his opinion, would ‘pursue better standards of performance.’”<sup>6</sup> LUMA considers that Dr. Alameda’s expert opinions on models of rewards and penalties, which ones should be applied to LUMA and why, as well as statements made as part of his expert testimony pertaining to concerns “about LUMA, LUMA’s contract [with PREPA], and LUMA’s performance to date”<sup>7</sup> must be stricken from the record because they exceed Dr. Alameda’s field of expertise: Economics.<sup>8</sup>

The Energy Bureau disagrees with LUMA about Dr. Alameda’s area of expertise and does not consider that attempts to restrict or narrowly define the true extent of his expertise in Economics as applied to subjects and industries that are relevant to the captioned matter would promote the best public interest of the residents of Puerto Rico. The models of rewards and penalties to be established by the Energy Bureau based on LUMA’s performance are crucial to these proceedings and they pertain to the economics of the electric industries, economically efficient provision and use of energy commodities, and resources and factors that lead away from economic efficiency. **The Energy Bureau shall review Dr. Alameda’s opinions and give them the weight they warrant in the adjudicative process.**

The Energy Bureau **DETERMINES** that Dr. Alameda’s statements at page 5, lines 6 to 19, page 21, lines 21 to 22, page 22, lines 12 to 15, and page 23, lines 1 to 7 are within his field of expertise and the scope of his testimony. Therefore, LUMA’s Motion to Strike is **DENIED IN PART** with respect to paragraphs nos. 3 to 5.

#### B. Paragraphs nos. 6 and 7 of LUMA’s Motion to Strike

At paragraph no. 6 of the Motion to Strike, LUMA describes its objections to “the questions presented [at] page 21, lines 21 to 22<sup>9</sup> because it is a compound question [that] includes three questions in one (...). LUMA further objects to the questions on the basis that they “called for and elicited a narrative response on matters that are not admissible because they are not rooted in the preceding portions of the testimony nor based on [Dr.] Alameda’s

<sup>4</sup> 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.

<sup>5</sup> Motion to Strike ¶ 3

<sup>6</sup> Id.

<sup>7</sup> Id., ¶. 5

<sup>8</sup> Id., ¶¶ 4 and 5.

<sup>9</sup> Of Dr. Alameda’s November 17, 2021 written expert testimony.



expertise as an economist.” LUMA further argues that “[n]o foundation was laid in the testimony to render admissible the witness’s response.”<sup>10</sup>

Regulation 8543 do not impose any restrictions on compound questions or narrative responses. Restrictions of that sort would defeat the Regulation’s purpose of promoting the best public interest of the residents of Puerto Rico securing a just, speedy, and inexpensive determination of all proceedings. In fact, promoting objections that are more akin to the direct interrogation of witnesses in judicial proceedings rather than expert witnesses in an administrative process would defeat the purpose of justice and not only of the Regulation 8543.

As stated above, at paragraph no. 1 of the Motion to Strike, LUMA acknowledges Dr. Alameda’s CV as having been incorporated into the docket with his written testimony of November 17 Motion. In addition, at paragraph no. 2, LUMA acknowledges Dr. Alameda’s detailing of his credentials and experience in the field of Economics and that the CV provides additional information to what was detailed by Dr. Alameda in the written testimony. Therefore, LUMA’s own admissions negate its allegations that the questions at issue are not admissible because: 1) they are not rooted in the preceding portions of the testimony; 2) they are not based on Dr. Alameda’s expertise as an economist; and 3) no foundation was laid in the testimony.

Additional objections are lodged by LUMA to the same question, this time requesting that testimony be stricken from the record because Dr. Alameda described “his understanding of what certain non-profit organizations have expressed with regards to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (‘the T&D OMA.’)”<sup>11</sup> LUMA argues that Dr. Alameda “did not explain the basis of his expressions. Nor has [Dr.] Alameda established that he is an authorized representative of any of the non-profit organizations he mentions in his response.”<sup>12</sup>

The Energy Bureau considers that as an expert in Economics, Energy Economics, and the Economics of the Electric Industry, Dr. Alameda possesses the analytical skills, the historical and institutional background necessary to understand the importance and impact the T&D OMA has across all sectors of society, and the related public policy issues. As a result of his position as a highly regarded Economist, academic, researcher, and author, Dr. Alameda can be informed about the opinions expressed by civil society groups regarding a subject matter that is within his area of expertise and of particular interest to him and his work, and being informed about matters relevant to his work and one of the main focus of his research activities should not be used against him nor should he be made to justify, in the course of giving his expert opinions, why or how he came to acquire knowledge of public information relevant to his work and field of expertise.

LUMA’s assertion that Dr. Alameda had to have established that he is, allegedly, “an authorized representative” of the civil society organizations that made public expressions he is aware of is not required for these proceedings, the powers delegated to the Energy Bureau, and its extensive know-how of how to properly conduct the proceedings.

The Energy Bureau **DETERMINES** that the questions and Dr. Alameda’s statements and/or responses at page 21, lines 21 to 26 and page 22, lines 1 to 2 are within his field of expertise, the scope of his testimony, and the provisions per Article VIII of Regulation 8543 on Disclosure of Evidence. Therefore, LUMA’s February 17, 2022’s Motion to Strike is **DENIED IN PART** with respect to paragraphs nos. 6 to 7.

### C. Paragraphs nos. 8 to 10 of LUMA’s Motion to Strike

LUMA objects to Dr. Alameda’s expert opinions on the subject of pass-through expenditures as per the terms of the T&D OMA. Dr. Alameda’s opinion, as paraphrased by LUMA in the Motion to Strike, are that “the T&D OMA allegedly lacks limits on operational expenditures

<sup>10</sup> February 17 Motion to Compel, ¶ 6.

<sup>11</sup> *Id.*, para. 7.

<sup>12</sup> *Id.*



and also on the alleged impact of the T&D OMA in labor protections and employee benefits.”<sup>13</sup> The testimony provided by Dr. Alameda in his November 17 Motion written expert testimony was to the effects that the partnership “between LUMA and PREPA-Commonwealth Government allows Pass-Through Expenditures, which do not provide adequate limits on many of LUMA’s operational expenditures.”<sup>14</sup>

LUMA asserts that the testimony should be stricken from the record because pass-through expenditures, LUMA’s operational expenditures, labor protections and employee benefits under the T&D OMA are not in controversy. Statutorily, Article 6.25B of Act No. 57, *supra*, on Performance-Based Incentives and Penalty Mechanisms establishes that:

It is necessary to encourage energy companies to invest, in a cost effective manner, in infrastructure, technology, the incorporation of distributed generation, renewable energy sources, and services that inure to the benefit of the electrical system and consumers. Thus, the Energy Bureau shall prescribe by regulations, on or before December 31, 2019, such incentive and penalty mechanisms that take into account electric power companies’ performance and compliance with the performance metrics set forth in the energy public policy.

The issues objected by LUMA are inextricably related to the review and adjudication of the matters pertaining to LUMA’s performance targets, and the subsequent measures that may be taken by the Energy Bureau. Claiming that significant sources of expenditures are not in controversy and outside the scope of the proceedings, expecting the Energy Bureau to consider LUMA’s compliance or non-compliance with performance metrics using information and data that excludes a key source of expenditures is improper and misleading.

LUMA’s claims that the Energy Bureau does not “enjoy authority in this proceeding over the subject matter of employee rights under the T&D OMA”. The captioned proceedings are not meant to give, reinstate, or vindicate “employee rights” as it is not the agency with said delegated authority. Nevertheless, the statutory authority vested on the Energy Bureau does include, at Article 6.25B of Act No. 57, *supra*, the following:

In developing such performance-based incentives and penalties, the Energy Bureau shall take into account the following criteria, among others:

- (a) the volatility and affordability of the electric power service rates;
- (b) the economic incentives and investment payback;
- (c) the reliability of the electric power service; customer service and commitment, including options to manage electric power costs available to customers;
- (d) customers’ access to the electric power companies’ information systems including, but not limited to, public access to information about the aggregated customer energy and individual consumers’ access to the information about their electric power consumption;
- (e) compliance with the Renewable portfolio standard and rapid integration of renewable energy sources, including the quality of the interconnection of resources located in consumers’ properties;
- (f) compliance with metrics to achieve the energy efficiency standards established in this Act;
- (g) infrastructure maintenance.

Although related to a certain extent, labor costs and workers’ rights are two distinct legal concepts. Decisions made by LUMA related to the allocation of resources to cover labor costs are inherently relevant to this proceeding and actually in controversy. As such, the Energy Bureau does possess vested powers over the subject matter of labor costs, particularly to the extent that LUMA’s actions and decisions affect, among other relevant matters: the volatility and affordability of the electric power service rates; the reliability of the electric power service; customer service and commitment, including options to manage electric power costs

<sup>13</sup> *Id.*, para. 8.

<sup>14</sup> Dr. Alameda’s November 17, 2021 written expert testimony, at pg. 22.



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available to customers; compliance with metrics to achieve the energy efficiency standards established in Act 57; and infrastructure maintenance.

As it pertains to LUMA's objections and attempts to support its motion to strike evidence in the form of expert testimony on critical expenditures and their impact on compliance with the T&D OMA at paragraph no. 10, the Energy Bureau reaffirms its conclusion that, by LUMA's own admissions at paragraphs nos. 1 and 2, Dr. Alameda has established that his qualifying expertise on matters as to which the Energy Bureau will, in due course, determine how illustrative, useful, and informative they may be to its adjudication of the controversies.

LUMA states at paragraph no. 10 that Dr. Alameda:

"has not established that he possesses specialized knowledge, skills, experience, training, or instruction to allow him to be qualified as an expert on the T&D OMA, LUMA's performance as the operator of Puerto Rico's T&D system LUMA's operational expenditures and labor protections and employee benefits generally or in connection with the T&D OMA. Nor did [Dr.] Alameda establish that he possesses technical or specialized skills on those subjects or that his alleged expertise on those matters is needed to enable the Energy Bureau to adjudicate controversies in this proceeding."

LUMA's statement to the effects that Dr. Alameda's "alleged expertise on those matters is needed to enable the Energy Bureau to adjudicate controversies in this proceeding" presupposes that the Energy Bureau lacks the necessary savvy, expertise, experience, and capacity to review and weigh expert testimony and properly, ethically, efficiently, objectively, fairly, and seriously perform its ministerial duties in adjudicating the controversies before it. The Energy Bureau discourages parties from, intentionally or otherwise, failing to use information suspected of being relevant and significant when the information counts against a party's own conclusion.

The Energy Bureau **DETERMINES** that the questions and Dr. Alameda's statements and/or responses at page 21, lines 21 to 26 and page 22, lines 1 to 2, and page 23, lines 1 to 7 are within his field of expertise, the scope of his testimony, and the provisions per Article VIII of Regulation 8543 on Disclosure of Evidence. Therefore, LUMA's February 17, 2022's Motion to Strike is **DENIED IN PART** with respect to paragraphs nos. 8 to 10.

**D. Paragraphs nos. 11 to 14 of LUMA's Motion to Strike**

Section 2.01.- Applicability of the Rules of Civil Procedure and the Rules of Evidence of Regulation 8543 establishes that:

The Rules of Civil Procedure and the Rules of Evidence may apply, in a supplemental manner to this Regulation, in any judicial proceeding before the Commission when, in the exercise of its discretion to handle cases before it, the Commission determines it by way of an order.

At paragraphs No. 11 to 14, LUMA schools the Energy Bureau with a review of Rules 403, 702, and 703 of the Puerto Rico Rules of Evidence. In a discreet footnote, LUMA references Regulation 8543's Section 2.01 and requests from the Energy Bureau the order contemplated in the Regulation. The Energy Bureau considers that is not warrant and necessary to issue an order pursuant to Section 2.01 of Regulation 8543 to pursue fairness and truth. LUMA has provided no persuasive support to its request that the Energy Bureau exercise its discretion and issue an order for the supplemental applicability of the Rules of Evidence. None of the factors enumerated by LUMA at paragraph no. 14 are applicable or convincing. The Energy Bureau is an administrative body and the risks of undue prejudice, misleading the jury, risk of confusion, unnecessary delay or cumulative evidence are nonexistent.

The Energy Bureau **DETERMINES** that no persuasive reason has been provided to justify the exercise its discretion pursuant to Section 2.01 of Regulation 8543 and issue an order for the supplemental applicability of the Rules of Evidence and the Rules of Civil Procedure to the captioned case. Therefore, LUMA's request for a supplemental order pursuant to Section 2.01 of Regulation 8543 is **DENIED**. LUMA's Motion to Strike is **DENIED IN PART** with respect to paragraphs nos. 11 to 14.



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**E. Paragraphs nos. 15 to 17 of LUMA's Motion to Strike**

LUMA's arguments at paragraph no. 15 against Dr. Alameda's expert qualifications and testimony are irrelevant as it pertains to Rule 703 of the Puerto Rico Rules of Evidence inasmuch as Rule 703 has not been made applicable to the captioned proceedings.

Moreover, LUMA's claim that Dr. Alameda's expert testimony should be stricken from the record because "LUMA's rebuttal expert witness opines that '[t]hese are matters of fact or legal interpretation which lie outside my domain or professional expertise'" does not support its request to strike Dr. Alameda's expert testimony.

For failure to establish that its rebuttal expert's statements are made by an individual with equivalent qualifications and identical areas of expertise, LUMA's argument at paragraph no. 15 fails.

Paragraph no. 16 makes the same contradicted arguments present at paragraphs nos. 8 to 10. Therefore, we incorporate by reference herewith the entirety of the discussion of paragraphs nos. 8 to 10 above.

Regarding Paragraph no. 17, the Energy Bureau incorporate by reference the discussion of the claims at paragraph no. 3. Furthermore, LUMA's concerns are unfounded inasmuch as the Energy Bureau, as the trier of facts and adjudicator, disagrees with the scenarios proposed by LUMA in which the expert opinions of a fully qualified expert on relevant subject matters would be unduly prejudicial and create confusion as to the subject matter of this proceeding.

The Energy Bureau **DETERMINES** that Dr. Alameda's statements at page 21, lines 21 to 26, page 22, lines 1-2, page 22, lines 12 to 15 and page 23, lines 1 to 7 are within his field of expertise and the scope of his testimony. Therefore, LUMA's February 17, 2022's Motion to Strike is **DENIED IN PART** with respect to paragraphs nos. 15 to 17.

**F. Paragraph no. 18 of LUMA's Motion to Strike**

Rules 403, 702, and 703 of the Puerto Rico Rules of Evidence are inapplicable to the proceedings before the Energy Bureau. The Energy Bureau was not convinced by LUMA's argument that it is proper and just to exercise its discretion and, pursuant to Section 2.01 of Regulation 8543, issue an order for the supplemental applicability of the Rules of Evidence the instant case. It is the Energy Bureau's duty and statutory responsibility to protect these proceedings from overzealous litigation.

The Energy Bureau **DETERMINES** that the exercise of discretion pursuant to Section 2.01 of Regulation 8543 is not justified in the instant case. The Energy Bureau further **DETERMINES** that Dr. Alameda's expert opinions and other testimony contained at page 21, lines 21 to 26, page 22, lines 1 to 2, and 12 to 14, and page 23, lines 1 to 7 are within his field of expertise, the scope of his testimony, and the provisions per Article VIII of Regulation 8543 on Disclosure of Evidence. Therefore, LUMA's February 17, 2022's Motion to Strike is **DENIED IN PART** with respect to paragraph no. 18.

**IV. Conclusion**

Consistent with the determinations made in Parts I, II, and III of this Resolution and Order, the Energy Bureau **DENIES** LUMA's Motion to Strike.

Be it notified and published.

Edison Avilés Deliz  
Chairman

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 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](mailto:margarita.mercado@us.dlapiper.com), [yahaira.delarosa@dlapiper.com](mailto:yahaira.delarosa@dlapiper.com), [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law), [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law), [hrivera@jrsp.pr.gov](mailto:hrivera@jrsp.pr.gov), [contratistas@jrsp.pr.gov](mailto:contratistas@jrsp.pr.gov), [agraitfe@agraitlawpr.com](mailto:agraitfe@agraitlawpr.com), [rstgo2@gmail.com](mailto:rstgo2@gmail.com), [pedrosaade5@gmail.com](mailto:pedrosaade5@gmail.com), [larroyo@earthjustice.org](mailto:larroyo@earthjustice.org), [flcaseupdates@earthjustice.org](mailto:flcaseupdates@earthjustice.org), [rolando@bufete-emmanueli.com](mailto:rolando@bufete-emmanueli.com), [notificaciones@bufete-emmanueli.com](mailto:notificaciones@bufete-emmanueli.com), [jessica@bufete-emmanueli.com](mailto:jessica@bufete-emmanueli.com), [rhoncat@netscape.net](mailto:rhoncat@netscape.net). I also certify that today, July 7, 2022, 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

