

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 LECO to
Respond to LUMA's Discovery Requests
Regarding Expert Witness Agustín Irizarry.

RESOLUTION AND ORDER

I. Introduction

On March 10, 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 *LUMA's Motion to Compel Discovery Requests Issued to LECO's Expert Witness Agustín Irizarry* ("Motion to Compel"). LUMA served 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 (Local Environmental and Civil Organizations, or "LECO") with a First and Second Sets of Interrogatories and Requests for Production of Documents on December 27, 2021 and with a Meet-And-Confer Letter regarding LUMA's First and Second Set of Interrogatories and Request for Production of Documents Addressed to Engineer Agustín Irizarry, Witness on Behalf of LECO on January 26, 2022 (Meet-and-Confer Letter). LECO answered both sets of interrogatories and requests for production of documents on January 13, 2022 and responded to the objections raised by LUMA to the discovery responses pertaining to and/or provided by Dr. Irizarry on February 4, 2022.

Pursuant to Sections 8.03(B) and (D) of Regulation 8543,¹ LUMA moves for an Order that compels LECO to further expand and supplement its responses to interrogatories number 8, 99, and 100 of LUMA's First Set of Interrogatories and Request for Production of Documents and to produce certain additional documents. LUMA considers LECO's January 13 and February 4, 2022's responses inadequate and insufficient and the information and documents requested in interrogatories number 8, 99, and 100 of its First Set of Interrogatories and Request for Production of Documents essential and being procured in good faith.

II. The Discovery Sought by LUMA

On October 20, 2021, the Energy Bureau issued a Resolution and Order in the above-captioned matter containing procedural calendar amendments² including deferring the period for filing written testimony by intervenors to November 17, 2021.³ LECO timely filed a *Motion to Submit Expert Testimony* on November 17, 2021, that included expert testimony from Dr. Agustín Irizarry Rivera ("Dr. Irizarry"), an Electrical Engineer, accompanied by his full Curriculum Vitae ("CV").

In its First Set of Interrogatories and Request for Production of Documents, its subsequent Meet-And-Confer Letter regarding LUMA's First and Second Set of Interrogatories and Request for Production of Documents, and the Motion to Compel, LUMA asks, at interrogatory number 8, to be provided with a copy of all of Dr. Irizarry's scholarly or scientific publications about renewable energy. Interrogatory number 99 asks Dr. Irizarry to

¹ Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings, December 18, 2014 ("Regulation No. 8543").

² Resolution and Order, *In Re: Performance Targets for LUMA Energy ServCo, LLC*, Case No. NEPR-AP-2020-0025, October 20, 2021 ("October 20 Resolution and Order").

³ *Id.*, p. 3.

describe his duties and powers as a member of the Board of Directors of the Puerto Rico Electric Power Authority ("PREPA"), while at interrogatory number 100 LUMA requests that Dr. Irizarry describe the duties and powers that Dr. Irizarry had when he was a member of the Board of Directors of PREPA.

In response to the request in LUMA's interrogatory number 8, LECO and Dr. Irizarry have referenced his CV submitted with his November 17, 2021 expert testimony and the list with the citations of Dr. Irizarry's fifty-four (54) publications on renewable energy topics and that the publications are publicly available documents. Meanwhile, LECO answered LUMA's interrogatories number 99 and 100 referring to the Operational Agreement of PREPA Holdings, LLC ("PREPA Holdings, LLC Limited Liability Company Agreement and Single Member Declaration") and the bylaws of PREPA's Board of Directors, respectively.

Dissatisfied, LUMA argues that LECO has failed to comply with the requirements and provisions pertaining to disclosing evidence in the Energy Bureau's Regulation No. 8543. Specifically, it is LUMA's assertion that LECO had to either fully answer or adequately object each of the disputed interrogatories and that LECO's imputed failures to articulate specific objections and to fully respond to LUMA's interrogatories, entitles LUMA to an order from the Energy Bureau compelling LECO to produce the information and documents in controversy.⁴

III. LUMA's Claim that LECO's Objections to Interrogatory No. 8 are Inappropriate and/or Inapplicable

Interrogatory number 8 of LUMA's December 27, 2021's First Set of Interrogatories and Request for Production of Documents, a copy of which was included with the Motion to Compel at Exhibit 3, asked LECO, as it pertained to Dr. Irizarry, to describe the research he had conducted on renewable energy and to provide copies of any related research published. With its January 13, 2022's answers, LECO raised an objection to the interrogatory to the effects that:

LECO objects to the portion of the request that seeks to obtain copies of any research Agustin Irizarry has published on this topic. Dr. Agustin Irizarry has published fifty-four (54) publications related to renewable energy. The titles to these publications can be found on the curriculum vitae (CV) provided with the Expert Testimony. Therefore, if LUMA is interested in reading them they can easily locate and obtain them by using the citations provided in the CV. Asking LECO to provide all fifty-four (54) publications is onerous and unduly burdensome to LECO.⁵

Having stated its objection, LECO responded that Dr. Irizarry had researched renewable energy systems since 1997 and that his CV included the references to all his peer-reviewed publications. LUMA was displeased with the objection raised by LECO to its interrogatory number 8 and, in its Meet-and-Confer Letter, LUMA contended that "*LECO's partial objection to Interrogatory No. 8 is per se improper*"⁶ and that it "*fails on the merits, as the request is proportional, specific and tailored to the needs of the case.*"⁷ In its request for a supplemented response from LECO, LUMA further affirmed that:

It should not be onerous or unduly burdensome for Engineer Irizarry to locate and facilitate his own publications. It is information under Engineer Irizarry's knowledge, custody, possession, or control. Please provide copies of the publications on research conducted on renewable energy, or at a minimum, please direct LUMA to the appropriate websites or databases in which the publications can be located.⁸

⁴ LUMA's Motion to Compel Discovery Requests Issued to LECO's Expert Witness Agustín Irizarry, *In Re: Performance Targets for LUMA Energy ServCo, LLC*, Case No. NEPR-AP-2020-0025, March 10, 2022 ("March 10 Motion to Compel"), p. 3.

⁵ *Id.*, pp. 3-4.

⁶ *Id.*, p. 4.

⁷ *Id.*

⁸ *Id.*



In response to the Meet-and-Confer Letter, LECO upheld its objection and alluded to LUMA's "own position on discovery, which is that '[p]ublicly available documents ...will not be produced...'"⁹ LECO further refuted LUMA's assertions and requests for production of documents by stating that "LUMA incorrectly implies that LECO did not facilitate production of these public documents. To the contrary, all publications can be identified and accessed through publications, with the citations provided in Dr. Irizarry's Curriculum Vitae."¹⁰

LUMA comes before the Energy Bureau through its Motion to Compel requesting that LECO be ordered to produce all fifty-four of Dr. Irizarry's scholarly publications. LUMA supports its request on Section 8.03(B) Regulation 8543 on Interrogatories¹¹ and imputes LECO with a sanctionable breach of its obligations pursuant to the referenced regulatory provision. While LUMA doesn't expressly reference Section 8.02(A) of Regulation 8543 on Protective Orders,¹² it argues that for LECO's objection to endure, it had to have established sufficient burden that, as per LUMA's Motion to Compel, LECO allegedly failed to do.¹³

According to LUMA, LECO's objection to producing Dr. Irizarry's fifty-four scholarly publications is "baseless,"¹⁴ "improper,"¹⁵ and holds "no merit."¹⁶ In its arguments supporting this Motion to Compel, LUMA presupposes that LECO is duty-bound to produce the requested publications but declines to do so because the number of scholarly articles published by Dr. Irizarry is substantial and the process of collecting and transferring the fifty-four articles to LUMA is what LECO objects to as being onerous and unduly burdensome.

LUMA's request for copies of Dr. Irizarry's fifty-four published scholarly articles is outside of the scope of discovery established in Article VIII of Regulation 8543 on Disclosure of Evidence and Sections 8.01, 8.02, and 8.03 of that Article. LUMA's restatement of LECO's objection is inaccurate and does not find support in Regulation 8543. At Section 8.01(B), Regulation 8543 provides, in pertinent part, the following:

(B) In addition to any other pertinent information, as part of the disclosure of evidence the parties may request:

(...)

- 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.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 8.03. - Interrogatories.

(...)

(B) Each interrogatory shall be fully answered in writing, separately, and under oath, unless it is properly objected.

1) If the interrogatory is objected, the grounds for objecting shall be presented in place of the answer and must be accompanied by a copy of the objected interrogatory.

¹² Section 8.02.- Protective Orders.

(A) The Commission may also limit the scope of the methods of discovery if it determines that, among other circumstances: (i) the evidence sought is unreasonably cumulative or duplicative; (ii) it can be obtained from some other source that is more convenient, less burdensome, or less expensive for the party who requests it; or (iii) the costs for obtaining the proposed evidence outweighs its likely benefits.

¹³ March 10 Motion to Compel, p. 4-5. "LECO at no point states the level of the burden that impeded it to produce Mr. Irizarry's publications, nor the steps LECO took to determine that burden. Neither LUMA nor the Energy Bureau can evaluate whether LECO properly invoked burdensomeness to avoid producing the requested publications without this information."

¹⁴ *Id.*, p. 3.

¹⁵ *Id.*, p. 4.

¹⁶ *Id.*



LECO's November 17, 2021 Motion to Submit Expert Testimony including expert testimony from Dr. Irizarry and a copy of his full CV, with LECO's January 13, 2022's response to LUMA's Meet-and-Confer Letter satisfy LECO's duties to disclose pertinent information regarding its expert witness Dr. Irizarry pursuant to Section 8.01(B)(4-5) of Regulation 8543.

LUMA, however, references Regulation 8543's Section 8.03(B) in support of its claim it is legally permitted copious, and excessive discovery, stating that it is "*entitled to fulsome discovery*"¹⁷ (...) but that "LECO did not submit objections to most of the interrogatories and yet does not answer in full."¹⁸ The Energy Bureau considers that LUMA asserting a right to receive copies of Dr. Irizarry's fifty-four published articles is based on an erroneous appreciation of what the publications are and are not pursuant to Regulation 8543. The fifty-four scholarly articles are not expert reports prepared by Dr. Irizarry for the analysis of a matter related to the matter before the Energy Bureau. As a result, thereof, the articles are not under the purview of Section 8.01(C)¹⁹ of Regulation 8543 and need not be disclosed by LECO as material pertinent to the matters in dispute in the instant case.

The inapplicability of Section 8.01(C) of Regulation 8543 to the discovery sought by LUMA with Interrogatory number 8 and the Motion to Compel, invariably and forcibly makes the request for any sanction or remedy pursuant the Regulation's Section 8.03(B) unfounded. The Energy Bureau does not refute that LUMA may have and can have a valid interest in obtaining and reviewing the entirety of Dr. Irizarry's vast body of published scholarly work.²⁰ This interest and any purpose for which LUMA would intend to use the content of any of Dr. Irizarry's fifty-four peer-reviewed publications in the captioned proceeding, does not entitle it, as a matter of law, to be provided by LECO with the copies of Dr. Irizarry's publications within the scope of the discovery process.

Now, LUMA further claims that LECO's objections and responses to Interrogatory number 8 are inappropriate because LUMA was not put in a position by LECO to independently procure all of Dr. Irizarry's published work. LUMA's argument that LECO failed to "*provide evidence to substantiate the objection that the publications can be easily located and obtained using the citations included in Mr. Irizarry's curriculum vitae*"²¹ also is unconvincing and would defeat the purpose of raising and upholding such an objection. According to LUMA's Motion to Compel, it "requested LECO, at a minimum, to direct LUMA to the appropriate websites or databases in which the publications can be located. While LUMA acknowledges that LECO has indicated that the fifty-four publications are "*publicly available*,"²² it still appeals for exercising the Energy Bureau's authority to compel LECO to rectify the perceived failure to "*direct LUMA to any website, database, or library in which those publications are located.*"²³

The request for the production by LECO of copies of Dr. Irizarry's fifty-four published scholarly articles constitutes intended discovery outside the scope permitted by Regulation

¹⁷ March 10 Motion to Compel, p. 2.

¹⁸ *Id.*, p. 3.

¹⁹ ARTICLE VIII.- DISCLOSURE OF EVIDENCE.

Section 8.01.- General Standards

The parties may disclose any material that is not privileged and that is pertinent to the matters in dispute in the pending case. Unless the Commission decides otherwise by order, the parties to the case shall conduct the discovery process subject to the following:

(...)

(C) A copy of every expert report, prepared by an expert hired by a party for the analysis of a matter related to a case before the Commission, must be delivered to the Commission and all other parties to the complaint within a period of ten (10) days from the date the expert delivers said report to the contracting party.

²⁰ March 10 Motion to Compel, pp. 3-4. LECO seems to have acknowledged as much in its answer to LUMA's Interrogatory number 8 where it stated that "*if LUMA is interested in reading them they can easily locate and obtain them by using the citations provided in the CV.*"

²¹ *Id.*, p. 5.

²² *Id.*

²³ *Id.*



8543, thus, LECO is not under an obligation to comply, assist, or facilitate it. It does not constitute an attempt by LECO to “withhold a complete production of documents to LUMA’s discovery request”²⁴ without reason.

LUMA’s final argument supporting its Motion to Compel regarding LECO’s responses to its Interrogatory number 8, is that LECO has objected to its demands for copies of Dr. Irizarry’s fifty-four scholarly publications because it would be onerous and unduly burdensome but has failed to prove just how burdensome it would actually be. In its January 26, 2022 request for a supplemented response from LECO, LUMA indicated to LECO that its objection based on undue burden “*fails on the merits, as the request is proportional, specific and tailored to the needs of the case.*”²⁵ LUMA further remarked that “[i]t should not be onerous or unduly burdensome for Engineer Irizarry to locate and facilitate his own publications.”²⁶

LUMA further argues to the Energy Bureau that “*LECO at no point states the level of the burden that impeded it to produce Mr. Irizarry’s publications, nor the steps LECO took to determine that burden. Neither LUMA nor the Energy Bureau can evaluate whether LECO properly invoked burdensomeness to avoid producing the requested publications without this information.*”²⁷ LUMA’s argument is unsupported by the applicable provisions of Regulation 8543.

The main flaw in LUMA’s arguments pertaining to whether LECO crossed LUMA’s threshold of “burdensomeness” is that being compelled to produce documents outside of the scope of discovery is unduly burdensome. Evidence beyond the purview of what is permitted by the regulatory provisions applicable to the discovery process cannot be attained from a party because the inconveniences and annoyances that the requesting party wishes to avoid trump the compelled party’s right to object and withhold documents it has no legal duty to produce with no regards to LUMA’s “level of the burden” and/or “the steps [taken] to determine that burden.” LUMA’s claim of proportionality also fails to impress the Energy Bureau on account that undue burden can be *de minimis* and still support an objection on the merits if it pertains to compelling evidence that the party compelled has no legal duty to produce.

As to LUMA’s assertions that LECO is interfering with LUMA and the Energy Bureau’s ability to “*evaluate whether LECO properly invoked burdensomeness,*” undue burden is a matter for the Energy Bureau to determine. The Energy Bureau will consider Section 1.05²⁸ of Regulation 8543 that sets the standard of interpretation of *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, and Section 8.02 on Protective Orders and weigh these regulatory provisions against LUMA’s contentions and demands and LECO’s objections thereto in relation to the discovery process.

The dictionary definition of “unduly” is “1. *immoderately; excessively.* 2. *In contradiction of moral or legal standards.*”²⁹ The second definition is especially illustrative to the controversy before the Energy Bureau because, in view of the foregoing analysis and discussion, ordering LECO to produce the discovery requested by LUMA would contradict legal standards, i.e., Regulation 8543, and, consequently, unduly burdensome.

Finally, while LUMA has emphasized alleged failures from LECO to “*provide evidence*” or “*substantiate*” the degree of its burden and justify the “*steps*” taken to “*determine that burden,*” LUMA has articulated no material arguments to demonstrate its own inability to

²⁴ *Id.*

²⁵ *Id.*, p. 4.

²⁶ *Id.*

²⁷ *Id.*, pp. 4-5.

²⁸ 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.*

²⁹ HarperCollins Publishers. Unduly. In Collinsdictionary.com dictionary. Retrieved from <https://www.collinsdictionary.com/us/dictionary/english/unduly>. Verified July 7, 2022.



obtain Dr. Irizarry's publications or to contradict LECO's justification that all fifty-four of Dr. Irizarry's scholarly publications are "publicly available documents."

Upon review of the above information, the Energy Bureau **DETERMINES** that LECO answered Interrogatory No. 8 and that its objections to further supplementing the response are valid. Therefore, LUMA's March 10 Motion to Compel is **DENIED IN PART** regarding LUMA's Interrogatory No. 8.

IV. LUMA's Claim that LECO's Responses to Interrogatories Nos. 99 and 100 Lack Full Responses

LUMA alleges that "*LECO refuses to provide the full scope of requested discovery on Interrogatories Nos. 99 and 100*"³⁰ and that its justifications are "*legally incorrect.*"³¹ Interrogatories number 99 and 100 concern Dr. Irizarry's tenure as a member of the Board of Directors of the Puerto Rico Electric Power Authority ("PREPA") and of PREPA Holdings LLC, and the specific duties and powers he held and/or exercised as a member of those boards. LECO sustains that Dr. Irizarry does not have personal copies of the bylaws and Operational Agreement under his control and referenced where the role of the Members of the Boards of Directors are specified.

At interrogatory number 99, LUMA requests from LECO a description of Dr. Irizarry's duties and powers as a member of the Board of Directors of PREPA Holdings LLC. In its response, LECO referenced PREPA Holdings, LLC's "Limited Liability Company Agreement and Single Member Declaration," the company's Operational Agreement ("Operational Agreement"). LECO referenced section 3.2 of the Operational Agreement that covers "Matters Reserved for Board of Managers Approval" and indicated that it describes the duties and powers of all members of the Board of Managers of PREPA Holdings LLC.

Similarly, at interrogatory number 100, LUMA asked LECO to describe Dr. Irizarry's duties and powers when he was a member of the Board of Directors of the Puerto Rico Electric Power Authority ("PREPA"). LECO responded that the bylaws of the Board of Directors of the Puerto Rico Electric Power Authority describe the duties and powers of all members of the Board.

In requesting that LECO supplement its responses to interrogatories number 99 and 100, LUMA expressed the following in its Meet-and-Confer Letter:

LECO's responses to Interrogatories Nos. 93, 99 and 100 are non-responsive. The questions required Engineer Irizarry to precisely describe the impact on the system reliability of improvement project and programs, including their impact before and after implementation and his duties and powers during his tenure as a member of the Board of Directors of PREPA Holdings, LLC and PREPA. Engineer Irizarry answered by referencing documents not produced nor publicly available. That is not appropriate for discovery responses. Please promptly supplement to answer the questions asked.³²

In LECO's response to LUMA's January 26, 2022 letter, it retorted, as to LUMA's demands for supplementation of the response to interrogatory number 99 that:

LECO's original response complies with the discovery requirements set forth in Regulation 8543 Section 8; no further response is required. LUMA's improper response appears designed to harass, intimidate, and obstruct LECO. Dr. Irizarry provided reference to the documents that precisely describe the duties and powers of a member of PREPA Holdings LLC's Board. Those documents are not under the custody or control of Dr. Irizarry.³³

³⁰ March 10 Motion to Compel, p. 5.

³¹ *Id.*

³² *Id.*, p. 7.

³³ *Id.*



As to interrogatory number 100, LECO's response to LUMA's letter of January 26 was as follows:

LECO's original response complies with the discovery requirements set forth in Regulation 8543 Section 8; no further response is required. Dr. Irizarry provided reference to the documents that precisely describe the duties and powers of a member of PREPA's Board of Directors. Those documents are not under the custody or control of Dr. Irizarry.³⁴

LUMA argues before the Energy Bureau that LECO and Dr. Irizarry's inability to provide copies of PREPA's bylaws and PREPA Holdings, LLC's Operating Agreement or a detailed and complete description of the content of the documents significantly jeopardizes LUMA's possibilities of "*taking the discovery to which it is entitled*."³⁵ LUMA also affirms that LECO statement that its responses to interrogatories number 99 and 100 comply with the discovery requirements of Section 8 of Regulation 8543 is legally incorrect because Section 8.03(D) of Regulation No. 8543 establishes that when a response can be found in some fixed media, the requested party must offer a reasonable opportunity to examine, inspect, reproduce, summarize, etc., which LECO did not do.³⁶

LUMA must only assume that when LECO referenced Section 8 of Regulation 8543 it intended to specifically reference Section 8.03(D), which the Energy Bureau doesn't consider is necessarily or logically the case because it is LECO's position they don't have these documents, that are third-party company records even if they have some relation to Dr. Irizarry and his professional trajectory, to produce or to provide for inspection.

The foregoing notwithstanding, in describing why this discovery is so vital to the proceedings and more so because LECO is unable to produce copies of certain company documents of PREPA, LUMA states that:

The fact that there are no documents in Mr. Irizarry's custody or control does not excuse LECO from providing this information. Indeed, it renders it even more critical for LUMA and the Energy Bureau that LECO provides the information critical to LUMA and the Energy Bureau.³⁷

The Energy Bureau does not consider that any potential evidence is necessarily more critical because it is less available. LUMA has not been effective in putting forward a convincing theory or justification of the possible relevance of the PREPA documents requested from LECO and the potential impact it could have in facilitating the Energy Bureau's delegated duty to resolve controversies in an efficient, collaborative, and expeditious manner. Nonetheless, in its effort to persuade the Energy Bureau, LUMA asserts that:

Notably, Mr. Irizarry claims in his responses to LUMA's discovery requests that he has experience in implementing and designing performance metrics in PREPA. For that reason, the extent of his responsibilities as a member of the different Boards of Directors has relevance. Neither LUMA nor the Energy Bureau can verify LECO's representations without such information. Mr. Irizarry is the proper and only party who can explain what the documents establish in his own words. After all, the interrogatories request Mr. Irizarry to describe his power and duties as a member of the two different Boards of Directors. Mr. Irizarry should have precise personal knowledge of those powers and duties.³⁸

LUMA fails to make a compelling connection between Dr. Irizarry's Board of Director's membership and the relevance to this proceeding of Dr. Irizarry's "*experience implementing and designing performance metrics in PREPA*" and may overstate its relevance.

³⁴ *Id.*

³⁵ *Id.*, p. 8.

³⁶ *Id.*, p. 5.

³⁷ *Id.*, p. 8.

³⁸ *Id.*



LUMA asserts that PREPA’s bylaws and PREPA Holdings, LLC’s Operating Agreement are not publicly available, and LECO has responded that the documents requested are not in possession of Dr. Irizarry. Dr. Irizarry’s lengthy and very detailed full CV reflects that he possesses extensive scientific training, achievements, and a level of experience and recognition in his field, which promulgated his membership in these Boards of Directors and Managers as the representative of consumers’ interests

It is generally understood that the Board of Directors of a State-Owned Corporation has primarily oversight functions and is intended to act as an intermediary between the government and the corporation’s leaders. The Energy Bureau, therefore, is not persuaded that it is highly plausible that the evidence that LUMA states it is seeking and that is “critical” to LUMA, and the Energy Bureau would come from the documents it is seeking through this Motion to Compel.

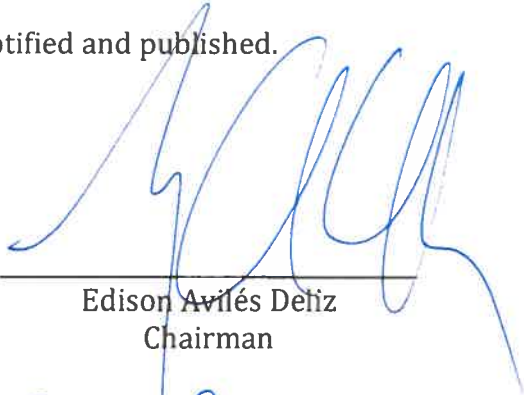
Another argument put forward by LUMA supporting this Motion to Compel is that “[n]either LUMA or the Energy Bureau can verify LECO’s representations without such information. Mr. Irizarry is the proper and only party who can explain what the documents establish in his own words.” The Energy Bureau considers that the documents sought by LUMA themselves establish that Dr. Irizarry is not, and cannot be, the proper and only party that can explain what the documents establish. First, the documents are official business records of PREPA, a public corporation of the Commonwealth of Puerto Rico that is a party to the captioned proceeding. Dr. Irizarry also cannot be the proper and only party that can produce and establish the putative relevance of these documents because the Energy Bureau’s brief and informal but telling search for the disputed documents suggests that they are publicly available or, at the very least, easy to obtain from their owner and custodian, PREPA.


Upon review of the above information, the Energy Bureau **DETERMINES** that LECO answered Interrogatories Nos. 99 and 100 and that its objections to further supplementing the response are valid. Therefore, LUMA’s March 10 Motion to Compel is **DENIED IN PART** regarding LUMA’s Interrogatories Nos. 99 and 100.

V. Conclusion

Consistent with the determinations made in Parts III and IV of this Resolution and Order, the Energy Bureau **DENIES** LUMA’s March 10, 2022, *LUMA’s Motion to Compel Discovery Requests Issued to LECO’s Expert Witness Agustín Irizarry*.

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



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on July 11, 2022. I also certify that on July 11, 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, larroyo@earthjustice.org, flcaseupdates@earthjustice.org, rolando@bufete-emmanuelli.com, notificaciones@bufete-emmanuelli.com, jessica@bufete-emmanuelli.com, rhoncat@netscape.net. I also certify that today, July 11, 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 11, 2022.


Wanda I. Cordero Morales
Interim Clerk

