

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

NEPR

Received:

Jan 31, 2023

9:57 PM

CASE NO. NEPR-AP-2020-0025

IN RE: PERFORMANCE METRICS
TARGETS FOR LUMA ENERGY SERVCO,
LLC

SUBJECT: Notice on Compliance with Resolution and Order of January 10, 2023, and Memorandum of Law in Support of Request for Confidential Treatment of Portions of Response to Request No. 48 Submitted as Part of the Second Set of Responses to Requests for Information filed on January 31, 2023

NOTICE ON COMPLIANCE WITH RESOLUTION AND ORDER OF JANUARY 10, 2023, AND MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL TREATMENT OF PORTIONS OF RESPONSE TO REQUEST NO. 48 SUBMITTED AS PART OF THE SECOND SET OF RESPONSES TO REQUESTS FOR INFORMATION FILED ON JANUARY 31, 2023

TO THE PUERTO RICO ENERGY BUREAU:

COME now **LUMA Energy, LLC** (“ManagementCo”), and **LUMA Energy ServCo, LLC** (“ServCo”), (jointly referred to as the “Operator” or “LUMA”), and respectfully state and request the following:

I. Introduction

On November 16, 2022, the Puerto Rico Energy Bureau (“Energy Bureau”) issued its 10th Requirement of Information to LUMA. After the Energy Bureau granted an extension of time, on December 5, 2022, LUMA notified its responses to the Energy Bureau’s 10th Requirement of Information. Regarding requests for information labeled PREB-LUMA-10-48 and PREB-LUMA-10-49, LUMA posed objections and answered that it had not prepared formal analyses that were responsive to those requests.

Thereafter, on January 10, 2023, the Puerto Rico Energy Bureau issued a Resolution and Order instructing LUMA to provide suitable responses to the Energy Bureau’s 10th Requirement

of Information, requests for information labeled PREB-LUMA-10-48 and PREB-LUMA-10-49 (“January 10 Order”).

In compliance with the January 10 Order, LUMA is submitting today, via email, its supplemental responses to the requests for information PREB-LUMA-10-48 and PREB-LUMA-10-49. LUMA is submitting an unredacted version of Attachment A to its supplemental response to PREB-LUMA-10-48 (“RFI No. 48”) under the seal of confidentiality as it contains confidential information under the Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued August 31, 2016.

Further, LUMA hereby submits a Memorandum of Law setting forth the legal basis for which LUMA is entitled to file portions of RFI No. 48 under the seal of confidentiality. As explained below, the Energy Bureau should protect the portions of information of RFI no. 48 from public disclosure as they contain LUMA’s sensitive commercial or trade secrets information. *See* Energy Bureau’s Policy on Management of Confidential Information § D(1).

II. Applicable Laws and Regulations to Submit Information Confidentially Before the Energy Bureau

The bedrock provision on the management of confidential information filed before this Energy Bureau is Section 6.15 of Act 57-2014, known as the “Puerto Rico Energy Transformation and Relief Act.” It provides, in pertinent part, that: “[i]f any person who is required to submit information to the Energy Commission believes that the information to be submitted has any confidentiality privilege, such person may request the Commission to treat such information as such” 22 LPRA § 1054n. If after appropriate evaluation the Energy Bureau determines that the information should be protected, “it shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted.” *Id.* § 1054n(a).

The confidential information shall be provided “only to the lawyers and external consultants involved in the administrative process after the execution of a confidentiality agreement.” *Id.* § 1054n(b). Finally, Act 57-2014 provides that this Energy Bureau “shall keep the documents submitted for its consideration out of public reach only in exceptional cases. In these cases, the information shall be duly safeguarded and delivered exclusively to the personnel of the [Energy Bureau] who needs to know such information under nondisclosure agreements. However, the [Energy Bureau] shall direct that a nonconfidential copy be furnished for public review.” *Id.* § 1054n(c).

Relatedly, in connection with the duties of electric power service companies, Section 1.10(i) of Act 17-2019 states that electric power service companies shall provide the information requested by customers, except for confidential information under the Rules of Evidence of Puerto Rico.

Moreover, the Energy Bureau’s Policy on Confidential Information details the procedures a party should follow to request that a document or portion thereof be afforded confidential treatment. In essence, the referenced Policy requires identifying confidential information and filing a memorandum of law explaining the legal basis and support for a request to file information confidentially. *See* CEPR-MI-2016-0009, Section A, as amended by the Resolution of September 20, 2016, CEPR-MI-2016-0009. The memorandum should also include a table that identifies the confidential information, a summary of the legal basis for the confidential designation, and why each claim or designation conforms to the applicable legal basis of confidentiality. *Id.* at ¶ 3. The party who seeks confidential treatment of information filed with the Energy Bureau must also file both “redacted” or “public version” and an “unredacted” or “confidential” version of the document that contains confidential information. *Id.* at ¶ 6.

III. Grounds for Confidentiality

It is respectfully submitted that portions of LUMA's response to RFI No. 48 constitute Trade Secret Information as they contain an internal assessment of its performance for Fiscal Year 2022 as compared to the targets set in the proposed Revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("T&D OMA"), and which specific information, LUMA has not disclosed publicly. Section D(1) of the Bureau's Confidential Management Policy states, in its pertinent part, the following regarding access to validated Trade Secret Information:

1. Trade Secret Information

Any document designated by the [Energy Bureau] as Validated Confidential Information because it is a trade secret under Act 80-2011 may only be accessed by the Producing Party and the [Bureau], unless otherwise set forth by the [Bureau] or any competent court.

Under the Industrial and Trade Secret Protection Act of Puerto Rico, Act 80-2011, P.R. Laws Ann. tit. 10, §§ 4131-4144 (2019), industrial or trade secrets are deemed to be any information:

- (a) That has a present or a potential independent financial value or that provides a business advantage, **insofar as such information is not common knowledge or readily accessible** through proper means by **persons who could make a monetary profit from the use or disclosure of such information**, and
- (b) for which reasonable security measures have been taken, as circumstances dictate, to maintain its confidentiality.

Id. § 4131, Section 3, Act. 80-2011.¹ They include but are not limited to, processes, methods and mechanisms, manufacturing processes, formulas, projects or patterns to develop machinery, and

¹ Relatedly, Rule 513 of the Rules of Evidence of Puerto Rico provides that the owner of a trade secret may invoke the privilege to refuse to disclose, and to prevent another person from disclosing trade secrets, provided that these actions do not tend to conceal fraudulent actions or lead to an injustice. 32 P.R. Laws

lists of specialized clients that may afford an advantage to a competitor. *See* Statement of Motives, Act 80-2011; *see also* Puerto Rico Open Data Law, Act 122-2019, Article 4 (ix) (exempting from public disclosure trade secrets) and Article 4(x) (exempting from public disclosure commercial or financial information whose disclosure will cause competitive harm).

The Puerto Rico Supreme Court has explained that the trade secrets privilege protects free enterprise and extends to commercial information that is confidential in nature. *Ponce Adv. Med. v. Santiago Gonzalez*, 197 DPR 891, 901-02 (2017) (citation omitted).

The Energy Bureau should protect the internal assessment of its performance for Fiscal Year 2022 as compared to the targets set in the proposed Revised Annex IX to the T&D OMA included as part of LUMA's response to RFI No. 48 because it constitutes financial and performance information that may prove advantageous or useful to LUMA's competitors in the energy business and utilities in Puerto Rico. Additionally, the internal assessment of its performance for Fiscal Year 2022 as compared to the targets set in the proposed Revised Annex IX to the T&D OMA is a component of LUMA's process, methods, or formula for evaluating its performance in providing services in a competitive manner while computing how that performance compares to achieving the proposed incentives. LUMA takes reasonable security measures, such as this one, to maintain the confidentiality of its internal assessments of performance and potential financial achievements. Disclosure of the information will compromise LUMA's ability to compete fairly in the future.

LUMA respectfully submits that the internal assessment of its performance for Fiscal Year 2022 as compared to the targets set in the proposed Revised Annex IX to the T&D OMA should be designated as commercially sensitive or trade secret information. This designation is a

Ann. Ap. VI, R. 513. If a court of law mandates disclosure of a trade secret, precautionary measures should be adopted to protect the interests of the owner of the trade secret. *Id.*

reasonable and necessary measure to protect the information and enable LUMA to compete fairly in the future.

It is respectfully submitted that the right of public access to information is promoted and protected by the public version of the response to RFI No. 48. The protection of the specific information pertaining to the internal assessment of its performance for Fiscal Year 2022 as compared to the targets set in the proposed Revised Annex IX to the T&D OMA will not hinder nor preclude the public in a material way from gaining access to relevant and necessary information concerning LUMA’s performance during Fiscal Year 2022. There is a dedicated proceeding before this Energy Bureau, in which LUMA reports its quarterly performance. *See* Case No. NEPR-MI-2019-0007. As such, the interest in the public viewing the information that LUMA hereby requests be kept confidential is outweighed by the harm that LUMA would be exposed to should the information be made available to the public.

IV. Identification of Confidential Information.

In compliance with the Energy Bureau’s Policy on Confidential Information, CEPR-MI-2016-0009 below is a table summarizing the hallmarks of this request for confidential treatment.

Attachment or Exhibit	Document or file name	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
1	Attachment A of the Supplemental Responses to PREB’s 10th Requirement for Information to RFI No. 48	RFI-LUMA-AP-2020-0025-16NOV22-PREB-R10-0048 Attachment A	Trade Secret Information under Section D(1) of the Energy Bureau’s Policy on Confidential Information,	January 31, 2023

Attachment or Exhibit	Document or file name	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
			CEPR-MI-2016-0009	

WHEREFORE, LUMA respectfully requests the Energy Bureau to **take notice** of the above and **approve the request for confidential treatment** of the internal assessment of its performance for Fiscal Year 2022 as compared to the targets set in the proposed Revised Annex IX to the T&D OMA found in *Attachment A* of LUMA’s *Supplemental Responses to PREB’s 10th Requirement for Information*.

RESPECTFULLY SUBMITTED.

We hereby certify that we filed this motion using the electronic filing system of this Energy Bureau. We will send an electronic copy of this motion to attorneys for PREPA, Joannely Marrero-Cruz, jmarrero@diazvaz.law; and Katuska Bolaños-Lugo, kbolanos@diazvaz.law, the Office of the Independent Consumer Protection Office, Hannia Rivera Diaz, hrivera@jrsp.pr.gov, and counsel for the Puerto Rico Institute for Competitiveness and Sustainable Economy (“ICSE”), Fernando Agrait, agraitfe@agraitlawpr.com, counsel for the Colegio de Ingenieros y a de Puerto Rico (“CIAPR”), Rhonda Castillo, rhoncat@netscape.net, and counsels for Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc., Enlace Latino de Acción Climatica, Alianza Comunitaria Ambientalista del Sureste, Inc., Coalicion 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 (jointly, Puerto Rico Local and Environmental Organizations), larroyo@earthjustice.org, rstgo2@gmail.com, notificaciones@bufete-emmanuelli.com, pedrosaade5@gmail.com., jessica@bufete-emmanuelli.com; rolando@bufete-emmanuelli.com, lvez@earthjustice.org, rmurthy@earthjustice.org, jcassel@earthjustice.org.

In San Juan, Puerto Rico, on this 31st day of January 2023.



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