

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

NEPR

Received:

Feb 3, 2023

4:31 PM

IN RE: PERFORMANCE TARGETS FOR  
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: MOTION REQUESTING  
THAT PREB ADDRESS  
OUTSTANDING ISSUES

**MOTION TO DENY LUMA'S CLAIM OF CONFIDENTIALITY FOR ITS  
RESPONSE TO PREB RFI 10**

**TO THE PUERTO RICO ENERGY BUREAU:**

COME NOW, 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, and Sierra Club and its Puerto Rico chapter, and Unión de Trabajadores de la Industria Eléctrica y Riego (collectively, "LECO"), to respectfully request that the Puerto Rico Energy Bureau ("PREB" or "Energy Bureau") reject LUMA's unsupported claims of confidentiality and require LUMA to immediately provide, in full, its responses to requests 48 and 49 of PREB's tenth requests for information.

On January 31, 2023, LUMA submitted an "informal analysis of performance during FY 2022 for some of the performance metrics included in the Revised Annex IX." LUMA requested that this analysis be withheld from the public, arguing that it contained Trade Secret Information, as defined by Act 80-2011 Section 3. LECO respectfully requests that the Energy Bureau reject LUMA's confidentiality request,

as it violates the Energy Bureau's [Policy on Management of Confidential Information](#)<sup>1</sup>, [the Principles of Transparency and Accountability ingrained in Puerto Rico's Energy Transformation and Relief Act](#)<sup>2</sup>, and does not meet the standards of Act 80-2011 Section 3.

**LUMA's request violates the Energy's Bureau's Policy on Management of Confidential Information**

LUMA's request fails because LUMA has failed to submit a redacted, public version of the document, as required by Paragraph (A)(6) of the Policy:

**The Producing Party must simultaneously file a "redacted" or "public" version and an "unredacted" or "confidential" version for any document containing Confidential Information. The filing of any document containing Confidential Information will not be deemed complete until the Producing Party files both versions of the document. The Producing Party must notify all parties a copy of the "redacted" or "public" version of said document. (Emphasis added).**

In fact, LUMA's response to PREB's Request of Information cannot even be deemed complete until the redacted document is sent to all intervenors (and therefore LUMA is in violation of PREB's January 10<sup>th</sup> Order to Compel Responses to the Energy Bureau's 10<sup>th</sup> Requirements of Information to LUMA). Even if and when LUMA's response is deemed complete, and if the Bureau determines any part of the document is confidential, there will be further delays before the Bureau provides the unredacted document to all parties via Section D of the Policy.

---

<sup>1</sup> In Re: Policy on Management of Confidential Information in Procedures Before the Commission, Resolution, CEPR-MI-2016-0009, (Aug. 31, 2016), <https://energia.pr.gov/wp-content/uploads/sites/7/2016/08/31-agosto-2016-Resolution-Confidentiality.pdf>.

<sup>2</sup> Puerto Rico Energy Transformation and Relief Act, Act 57-2014, 22 LPRA §1051b (2014).

The delays caused by LUMA's delays and incomplete responses are especially concerning since the result, if not the intent, of LUMA's late response is that LUMA's witnesses are shielded from answering intervenor questions on the Analysis. These questions are fundamental to intervenors' understanding of LUMA's compliance with its own proposed metrics to date; whether and how thoroughly LUMA is evaluating its own performance addressing an event that was devastating and life-threatening for many residents of Puerto Rico; and, potentially, whether additional metrics are necessary to safeguard Puerto Ricans in such crisis events.

**LUMA's request is contrary to the principles of transparency and accountability established in the Puerto Rico Energy Transformation and Relief Act**

Act 57-2014 declares that **transparency** and citizen participation are vital to energy service-related processes. <sup>3</sup> To guarantee the transparency it seeks to promote, the law establishes its "Principles of Transparency and Accountability" which dictates:

In accordance with the public policy established in Section 1.2 of this Act, every information, data, delivered demand, statistics, reports, plans, and documents received and/ or disclosed by any of these entities created under this Act, the Authority, its successor, the transmission and distribution network Contractor, and every electric power company shall be subject to the following principles:

[...]

(7) Data produced by employees, officials, or contractors working for the Commonwealth of Puerto Rico shall not be subject to any copyright patents, trademarks, or trade secret. Reasonable restrictions based on doctrines of privacy, security and evidentiary privileges may apply; and

---

<sup>3</sup> *Id.* at §1051 (emphasis added).

(8) Such data shall be available in nonproprietary format; that is to say, no one shall have exclusive control over it. <sup>4</sup>

The law clearly positions the principles of transparency over those of trade secrets. In fact, Act 57-2014's emphasis on transparency and public participation is so firm that it goes so far as to indicate that an official must be designated by the entity to whom these principles apply in order to respond to any questions that users may have on information published.<sup>5</sup>

LUMA's internal assessment of its performance for Fiscal Year 2022, which it wishes to keep secret, is and should be considered public information under Section 1.4(a) of Act 57-2014 and must thus be accessible to the parties in this proceeding and to public citizens because it facilitates public participation in the Performance Metrics case, which is an energy-related process. Keeping this information private under the guise of "trade secrets" would constitute an affront to the rights of Puerto Ricans and to the spirit behind Act 57-2014.

**LUMA Has Failed to Demonstrate that its Analysis is a Trade Secret.**

LUMA claims that the document contains Trade Secret information. LUMA acknowledges that confidentiality is an extraordinary measure, that justifications must be held to an especially high standard, and that information can be kept "out of public reach only in exceptional cases."<sup>6</sup> 22 LPRA 1054n(c).

---

<sup>4</sup> *Id.* at §1051b.

<sup>5</sup> *Id.*

<sup>6</sup> LUMA, *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*

LUMA explains that its analysis has two parts. The first part involves “providing services in a competitive manner”.<sup>7</sup> LUMA has not identified any competitor or “person who could make a monetary profit from the use or disclosure of” the first portion of the analysis. Therefore, LUMA has not discharged its burden to establish that this response is a Trade Secret. Act 80-2011 Section 3.

The second part of LUMA’s Analysis involves “computing how [LUMA’s] performance compares to achieving the proposed incentives.”<sup>8</sup> Evaluation of LUMA’s performance against its own proposed incentives is not a Trade Secret. It does not involve any type of proprietary “processes, methods and mechanism[s]”.<sup>9</sup> It certainly does not involve any "manufacturing processes, formulas, projects or patterns to develop machinery," or a "list of specialized clients that may afford an advantage to a competitor."<sup>10</sup> To the contrary, it is plainly and naturally in the public interest to understand whether LUMA is satisfying – or, indeed, even meaningfully evaluating its performance against – the metrics it has proposed for events with disastrous implications for Puerto Ricans.

### Conclusion

For the reasons detailed above, LECO respectfully requests that PREB reject LUMA’s unsupported claims of confidentiality and require LUMA to immediately

---

*Set of Responses to Requests for Information filed on January 31, 2023 at 3, PREB Dkt. No. NEPR-AP-2020-0025, Performance Metrics Targets for LUMA Energy Servco. LLC, (Jan. 31, 2023). [Hereinafter, “LUMA’s Notice on Compliance”].*

<sup>7</sup> LUMA’s Notice on Compliance at 5.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 4-5.

<sup>10</sup> *Id.*

provide, in full, its responses to requests 48 and 49 of PREB's tenth requests for information.

Respectfully submitted. In San Juan Puerto Rico, February 3rd, 2023.

/s/ Laura Arroyo

Laura Arroyo  
RUA No. 16653  
Earthjustice  
4500 Biscayne Blvd.  
Suite 201  
Miami, FL 33137  
T: 305-440-5436  
E: larroyo@earthjustice.org

/s/ Raghu Murthy

Raghu Murthy  
Earthjustice  
48 Wall Street, 19th Floor  
New York, NY 10005  
T: 212-823-4991  
E: rmurthy@earthjustice.org

/s/ Lorena I. Vélez Miranda

Lorena I. Vélez Miranda  
RUA No. 22720  
Earthjustice  
151 Calle de San Francisco  
Ste 200 PMB 0528  
San Juan, PR 00901-1607

/s/ Jennifer Cassel

Jennifer Cassel  
Earthjustice  
311 S. Wacker Drive, Suite  
1400  
Chicago, IL 60606  
T: (312) 500-2198  
E: jcassel@earthjustice.org

/s/ Ruth Santiago

Ruth Santiago  
RUA No. 8589  
Apartado 518  
Salinas, PR 00751  
T: 787-312-2223  
E: rstgo2@gmail.com

/s/ Pedro Saadé Lloréns

Pedro Saadé Lloréns  
RUA No. 4182  
Clínica Asistencia Legal,  
Sección Ambiental  
Escuela de Derecho  
Universidad de Puerto Rico  
Condado 605 – Office 616  
San Juan, PR 00907  
T: 787-397-9993  
E: pedrosaade5@gmail.com

/s/ Rolando Emmanuelli Jiménez

Rolando Emmanuelli-Jiménez  
RUA No. 8509  
E: rolando@emmanullie.law

/s/ Jessica Méndez-Colberg

Jessica Méndez-Colberg  
RUA No. 19853  
E: jessica@emmanuelli.law

/s/ Zoé C. Negrón Comas

Zoé C. Negrón Comas  
RUA No. 22276  
E: zoe@emmanuelli.law

472 Tito Castro Ave.  
Marvesa Building, Suite 106  
Ponce, Puerto Rico 00716  
Tel: (787) 848-0666  
Fax: (787) 841-1435  
notificaciones@bufeteemmanuelli.com

## CERTIFICATION OF SERVICE

I hereby certify that on February 3, 2023, I served this Motion to the following parties:

- Puerto Rico Energy Bureau: secretaria@energia.pr.gov; secretaria@jrsp.pr.gov; legal@jrsp.pr.gov and atorres@jrsp.pr.gov
- LUMA Energy LLC and LUMA Energy ServCo LLC: mmercado@mercado-echegaray-law.com; margarita.mercado@us.dlapiper.com; yahaira.delarosa@us.dlapiper.com; and ana.rodriguezrivera@us.dlapiper.com
- PREPA: jmarrero@diazvaz.law; kbolanos@diazvaz.law
- Oficina Independiente de Protección al Consumidor (OIPC): contratistas@oipc.pr.gov; hrivera@oipc.pr.gov
- Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (ICSE): agraitfe@agraitlawpr.com
- Colegio de Ingenieros y Agrimensores de Puerto Rico (CIAPR): rhoncat@netscape.net

*/s/ Raghu Murthy*

Raghu Murthy

Earthjustice

48 Wall Street, 19th Floor

New York, NY 10005

T: 212-823-4991

E: rmurthy@earthjustice.org