

**COMMONWEALTH OF PUERTO RICO  
PUBLIC SERVICE REGULATORY BOARD  
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**IN RE:** REVIEW OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY’S  
SYSTEM REMEDIATION PLAN

**CASE NO.:** NEPR-MI-2020-0019

**SUBJECT:** Designation of Confidential  
Material and Legal Memorandum in Support  
of Request to Submit Portion of Exhibit  
Confidentially.

**REQUEST TO SUBMIT PORTIONS OF SECTION 6 OF THE SYSTEM  
REMIADIATON PLAN CONFIDENTIALY, AND MEMORANDUM OF LAW IN  
SUPPORT THEREOF**

**TO THE HONORABLE 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**

LUMA has filed before this honorable Puerto Rico Energy Bureau (“Energy Bureau” and/or “Bureau”), a Petition for Approval of the System Remediation Plan (“SRP Petition”), per its obligations under Section 4.1(d) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020, by and among the Puerto Rico Electric Power Authority (“PREPA” or “Owner”), the Puerto Rico Public-Private Partnerships Authority (“P3 Authority”) (“OMA”). The SRP Petition includes, as Exhibit 1, LUMA’s proposed System Remediation Plan (“SRP”). Section 6.0 of the SRP (entitled, SRP Portfolios & Spending Profiles) includes several portfolios of SRP improvement programs (“SRP programs”). As will be explained below, *see* subsections III and IV *infra*, several portions of the SRP and of the SRP

programs include sensitive commercial information on the resource needs and allocation of funds for future acquisitions that are necessary to implement proposed programs. *See* Sections 3.1 (Program Funding and Allocation of Expenditures); Sections 3.2 (Program Resource Requirements); and Sections 3.3 (Estimating Methods and Assumptions), of SRP Sections 6.1 through 6.7. This information should be protected from public disclosure to secure the orderly conduct of proceedings for competitive acquisition of goods and services.

Secondly, several sections of the SRP and of the SRP programs, include confidential information in the form of critical energy infrastructure information or critical electric infrastructure information (“CEII”) that garners protection from public disclosures pursuant to federal statutes and regulations, *see e.g.*, 6 U.S.C. §§ 671-674; 18 C.F.R. §388.113 (2020), and the Bureau’s Policy on Management of Confidential Information, *see* the Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009 (“Policy on Management of Confidential Information”), issued on August 31, 2021. *See* Sections III and IV, *infra* (identifying Confidential SRP programs and Appendix F2 of the SRP). The CEII pertains to safety systems and to vulnerabilities of critical system infrastructure that, if disclosed, would expose the electric power grid to attacks to the detriment of the public interest.

Thirdly, portions of Appendix D of the SRP rely upon and mention details of reports that LUMA received from PREPA confidentially. Pursuant to Section 13.2(a) of the OMA, and as is explained below, LUMA respectfully requests that the Bureau accept and keep portions of pages 333 through 334 of Appendix D of the SRP, confidentially, unless PREPA waives the right to confidentiality of said information.

In compliance with the Bureau’s Policy on Management of Confidential Information, LUMA submits this Petition and supporting Memorandum of Law that identifies and explains the

legal basis for the confidential treatment of portions of the SRP and the SRP programs. Also in compliance with the Policy on Management of Confidential Information, LUMA submitted today for the public record, a “redacted” or “public” version of the SRP. A “non-redacted” or “confidential” version of the SRP will be filed electronically with the Bureau, as allowed by the Policy on Management of Confidential Information.

It is respectfully submitted that in furtherance of Act 57-2014’s mandate that documents submitted before the Bureau should be kept out of public reach only in exceptional circumstances, this request for confidential designation is narrowly tailored to specifically protect the information that has been identified as confidential according to applicable law and regulations on CEII, sensitive commercial information and/or contractual confidential information. As the Bureau may confirm, the main body and clear majority of the SRP and the SRP programs, have been filed for the public record. Only discrete portions of the document have been designated as confidential and filed as such. LUMA is committed to transparency to enrich this proceeding and to enable the Bureau, interested stakeholders, and customers, to fully evaluate and consider the SRP

## **II. Applicable Laws and Regulation to submit information confidentially before the Energy Bureau.**

The bedrock provision on management of confidential information that is 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 . . . .” If the Bureau determines, after appropriate evaluation, 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.*, Section 6.15 (a).

Access to 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.* Section 6.15(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 [Bureau] who needs to know such information under nondisclosure agreements. However, the [Bureau] shall direct that a non-confidential copy be furnished for public review. *Id.* Section 6.15 (c).

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

The aforementioned Policy on Management of Confidential Information states the following with regards to access to validated Trade Secret Information and CEII:

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.

2. Critical Energy Infrastructure Information ("CEII")

The information designated by the [Energy Bureau] as Validated Confidential Information on the grounds of being CEII may be accessed by the parties' authorized representatives only after they have executed and delivered the Nondisclosure Agreement.

Those authorized representatives who have signed the Non-Disclosure Agreement may only review the documents validated as CEII at the [Energy Bureau] or the Producing Party's offices. During the review, the authorized representatives may not copy or disseminate the reviewed information and may bring no recording device to the viewing room.

*Id.* Section D (on Access to Validated Confidential Information).

Relatedly, Bureau Regulation No. 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings*, includes a provision for filing confidential information in adjudicatory proceedings before this honorable Bureau. To wit, Section 1.15 provides that, "a person has the duty to disclose information to the [Bureau] considered to be privileged pursuant to the Rules of Evidence, said person shall identify the allegedly privileged information, request the [Bureau] the protection of said information, and provide supportive arguments, in writing, for a claim of information of privileged nature. The [Bureau] shall evaluate the petition and, if it understands [that] the material merits protection, proceed accordingly to . . . Article 6.15 of Act No. 57-2014, as amended." *See also* Bureau Regulation No. 9137 on *Performance Incentive Mechanisms*, Section 1.13 (addressing disclosure before the Bureau of Confidential Information and directing compliance with Resolution CEPR-MI-2016-0009).

### **III. Request for Confidentiality**

## A. Sensitive Commercial Information

Under the Industrial and Trade Secret Protection Act of Puerto Rico, Act 80-2011, 10 P.R. Laws Annot. §§ 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.<sup>1</sup> They include, but are not limited to, processes, methods and mechanisms, manufacturing processes, formulas, projects or patterns to develop machinery and lists of specialized clients that may afford an advantage to a competitor. *See* Statement of Motives, Act 80-2011.

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).

Portions of Sections 6.1 through 6.7 of the SRP contain improvement programs with SRP initiatives included under seven Improvement Portfolios that were created for all improvement programs. The seven Improvement Portfolios of similar and interdependent programs, cover the areas of Customer Service, Transmission, Substations, Control Center and Buildings, Enabling, and Support Services.

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<sup>1</sup> 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 Annot. 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.*

For each of the SRP programs, Section 6.0 (subdivided into subsections 6.1 through 6.7) of the SRP includes a brief “Program Description” (Section 1.0), detailing the purposes of the program and the main objectives. Also for each of the SRP programs there is a Section on “Program Rationale” (Section 2.0), that is subdivided into Section 2.1 through 2.6. These Sections 2.1 through 2.6 reference the tasks to be performed; the results to be achieved upon completion; the specific activities to be conducted; an inventory of the program benefits according to the primary goals, objectives and their impact; and an assessment of the program risks.

Additionally, all of the Sections 3.0 included in Sections 6.1 through 6.7 of the SRP (Program Funding and Timeline) for each of the SRP programs, include three subsections with sensitive commercial information on estimated funding (Section 3.1); program resource requirements (Section 3.2), and estimating methods and assumptions (Section 3.3). These Sections should be kept confidentially for all of the programs within each of the portfolios. This, to secure the orderly conduct of future competitive procurement processes and to avoid granting unfair advantages to suppliers and/or potential proponents of bidders. *See* Section IV, *infra*, for specific pages with confidential information.

It is respectfully submitted that Sections 3.1, 3.2, and 3.3 of Sections 6.1 through 6.7 of the SRP, reveal processes and estimations that are key to LUMA’s operations and success under the OMA Agreement. They provide details on specific resources that LUMA proposes to acquire for the different programs, including specifications of materials and goods and explanations on the needs. In several instances, the referenced portions of Sections 6.1 through 6.7 of the SRP, include the quantities that LUMA foresees to acquire and details on the nature and extent of necessary personnel and consultants, as well as estimates on allocations of funds for the acquisitions.

Because Sections 3.1, 3.2, and 3.3 included in each of the programs within Sections 6.1 through 6.7 of the SRP, provide details on LUMA's analysis on targets for acquisitions, disclosure of the information will stifle future competitive processes and the possibility of competitive tension to further reduce costs since participants will have had the benefit of seeing LUMA's estimates and proposed budgets for the acquisition of these goods and services.<sup>2</sup> These higher costs will result in higher expenditures that will either tend to increase rates or decrease the availability of funds for other maintenance and construction activities. Ultimately, release of this information will be contrary to efficient use of funds and public interest.

LUMA requests that Sections 3.1, 3.2, and 3.3 of Sections 6.1 through 6.7 of the SRP, be maintained confidentially before this Energy Bureau as they have sensitive commercial information whose premature disclosure would also contravene public policy on competitive procurement processes and will impede efficient allocation of PREPA funds that have been earmarked in the Initial Budgets to be invested in programs that would be funded over the next three years to deliver value to customers in accordance with policy and OMA requirements and within annual budget constraints.

## **B. Critical Energy/Electric Infrastructure Information (CEII)**

Seven of the SRP programs included in Sections 6.1 through 6.7 of the SRP reference critical energy infrastructure information that, under relevant Federal Law and Regulations, is protected from public disclosure and receives confidential treatment. In several proceedings, this

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<sup>2</sup> As persuasive authority on the need to protect from early disclosure, information relevant to competitive procurement processes, LUMA requests that this honorable Energy Bureau consider

*See also* Section 10.1 of the Joint Regulation 8815, *Joint Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet*, which provides for the confidentiality of information presented for procurement processes within PREPA, prior to awarding a contract, and that preserves the confidentiality of trade secrets, proprietary information or privileged and confidential information.

Also relevant is PREPA's Regulation on Public Auctions, Regulation No. 8518 with gives PREPA discretion to designate confidential materials that are part the record of an auction for acquisition of goods and services.

Energy Bureau has considered and/or granted requests by PREPA to submit CEII under seal of confidentiality.<sup>3</sup> In at least two proceedings on Data Security,<sup>4</sup> and Physical Security,<sup>5</sup> this Bureau, *motu proprio*, has conducted proceedings confidentially, thereby recognizing the need to protect CEII from public disclosure.

As mentioned above, the Bureau's "Policy on Management of Confidential Information," CEPR-MI-2016-0009, provides for management of CEII, and directs that information validated as CEII shall be accessed by the parties' authorized representatives only after they have executed and delivered a Nondisclosure Agreement.

Generally, CEII or critical infrastructure information is exempted from public disclosure because it involves information on assets the disclosure of which poses public security, economic, health and safety risks. Federal Regulations on CEII, particularly, 18 C.F.R. § 388.113, states that:

Critical energy infrastructure information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

- (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
- (ii) Could be useful to a person in planning an attack on critical infrastructure;
- (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and
- (iv) Does not simply give the general location of the critical infrastructure.

*Id.*

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<sup>3</sup> See *In re Implementation of Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, NEPR MI 2020-0012 (Resolution of January 7, 2021, granting partial confidential designation of information submitted by PREPA as CEII); *In re Optimization Proceeding of Minigrid Transmission and Distribution Investments*, NEPR MI 2020-0016 (where PREPA filed documents under seal of confidentiality invoking, among others, that a filing included confidential information and CEII. The document filed by PREPA under seal as CEII has not been publicly disclosed (*In re Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, CEPR-AP-2018-0001 (Resolution and Order of July 3, 2019 granting confidential designated and request made by PREPA that included trade secrets and CEII) *but see* Resolution and Order of February 12, 2021 reversing in part, grant of confidential designation).

<sup>4</sup> *In re Review of the Puerto Rico Electric Power Authority Data Security Plan*, NEPR-MI-2020-0017.

<sup>5</sup> *In re Review of the Puerto Rico Electric Power Authority Physical Security Plan*, NEPR-MI-2020-0018.

Additionally, “[c]ritical electric infrastructure means a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters. *Id.* Finally, “[c]ritical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.” *Id.*

The Critical Infrastructure Information Act of 2002, 6 U.S.C. §§ 671-674 (2020), which is part of the Homeland Security Act of 2002 provides protection from public disclosure of critical infrastructure information. CII is defined as “information not customarily in the public domain and related to the security of critical infrastructure or protected systems...” 6 U.S.C. § 671 (3).<sup>6</sup>

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<sup>6</sup> Regarding protection of voluntary disclosures of critical infrastructure information, 6 U.S.C. § 673, provides in pertinent part, that CII:

- (A) shall be exempt from disclosure under the Freedom of Information Act;
- (B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;
- (C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;
- (D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this part, except—
  - (i) in furtherance of an investigation or the prosecution of a criminal act; or
  - (ii) when disclosure of the information would be--
    - (I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or
    - (II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the Government Accountability Office
- (E) shall not, be provided to a State or local government or government agency; of information or records;
  - (i) be made available pursuant to any State or local law requiring disclosure of information or records;
  - (ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

## **1. Confidential Portions of SRP Programs**

The following programs included in Sections 6.1 through 6.7 of the SRP, include CEII, that, if disclosed to the public, will expose critical assets to security vulnerabilities or attacks by persons seeking to cause harm to the systems. LUMA asks that the Energy Bureau accept the following discrete portions of the SRP, confidentially:

### **i. Critical Energy Management System Upgrades, SRP at pages 166-168**

This program involves replacement of the Energy Management System (EMS) and related technology to operate the electric system safely and reliably. The EMS is a computer-based system that is used by operators to monitor, control and optimize the performance on the generation, transmission and distribution system. The SRP includes a description of the current state of the EMS, including its vulnerabilities. *See* Exhibit 1 to the SRP Petition at page 166. Sections 2.2, 2.3, and 2.4 of the SRP provide content on the program for remediation, including the activities to be conducted. *Id.* at pages 166-168. Section 2.5 describes the benefits of the program with reference to the primary goals, objectives and impact, and Section 2.6 identifies the risks involved in failure of the EMS. *Id.* All of this information should be kept confidentially, as it involves critical infrastructure and provides LUMA's assessment of its vulnerabilities and how and why to address them.

### **ii. Critical Energy Management & Load Generation Balancing, pages 178 through 182**

This program involves development of capabilities related to energy management and load/generation balancing. The SRP includes a description of the current state of technology to

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(iii) be used other than for the purpose of protecting critical Infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act.

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

support a generation control system including automatic generation control (AGC), which is an automation system that instantly reacts to unbalance in the system and adjusts generation outputs to keep the system balanced including its vulnerabilities. Sections 2.2, 2.3, and 2.4 provide content on the program for remediation, including the activities to be conducted. *Id.* at page 179. Additionally, Section 2.5 describes the benefits of the program with reference to the primary goals, objectives and impact, and Section 2.6 identifies the risks involved in delaying the program. *Id.* at pages 180-181. All of this information should be kept confidentially, as it involves critical infrastructure and provides LUMA's assessment of its vulnerabilities and how and why to address them.

**iii. Control Center Construction & Refurbishment, pages 170 through 173**

Control centers are critical facilities that play a vital role in the safe, reliable and economic performance of the entire electric grid. This program is targeted at construction or refurbishment of buildings to house the main and back-up control centers and all ancillary support services. The Control Center, undeniably, involves infrastructure that is critical to operating the generation and transmission systems. It is in the public interest to designate as CEII and CII, this program that involves remediation of an essential component of systems operations.

Sections 2.1, 2.2, 2.3, and 2.4 of the Control Center Construction & Refurbishment program provide content on the program for remediation, including the activities to be conducted. *Id.* at pages 170-171. Additionally, Section 2.5 describes the benefits of the program with reference to the primary goals, objectives and impact, and Section 2.6 identifies the risks involved in delaying the program. *Id.* at pages 171-172. All of this information should be kept confidentially, as it involves the critical infrastructure and provides LUMA's assessment of its vulnerabilities and how and why to address them.

**iv. IT OT Telecom Systems & Networks, pages 102 through 108**

This program is part of the Transmission Portfolio and includes Information Technology (IT) and Operational Technology (“OT”) telecom investments to improve and revamp PREPA’s mobile radio system, phone exchange and telephone systems and fiber optic and microwave data radio systems. These systems are used to carry out all of PREPA’s IT and OT data. They are, therefore, part of the critical infrastructure to operate the electrical grid safely and responsibly.

Section 2.1 includes a description of the technology currently available on network connectivity and Telecom protection. *Id.* at page 102. Sections 2.2, 2.3, and 2.4 of the IT OT Telecom Systems & Networks program provide content on the program for remediation, including the activities to be conducted which in this program involves three steps. *Id.* at pages 102-104. Additionally, Section 2.5 describes the benefits of the program with reference to the primary goals, objectives and impact, and Section 2.6 identifies the risks of delaying the program because it is a key component of protecting people, property and equipment. *Id.* at pages 105-107. The aforementioned sections also reference cybersecurity vulnerabilities. All of this information should be kept confidentially, as it involves critical infrastructure and provides LUMA’s assessment of its vulnerabilities and how and why to address them with regards to the IT and OT Systems and Networks.

**v. IT OT Cybersecurity Program, pages 259 through 265**

This program centers on enabling the business and protecting key organizational assets, including people, resources and technology to ensure that cyber risk, internal and external threats, vulnerabilities, and natural disasters are identified and mitigated based on risk and readiness factors. The SRP includes a description of the program and identifies cyber risks that could severely impact T&D operations.

Sections 2.1, 2.2, 2.3, and 2.4 of the IT OT Cybersecurity program provide content on the program for remediation, including the activities to be conducted and the types of security measures to be implemented. *Id.* at pages 260-262. Additionally, Section 2.5 describes the benefits of the program with reference to the primary goals, objectives and impact, and Section 2.6 identifies the risks of failing to implement adequate cybersecurity controls. *Id.* at pages 263-264 294. The aforementioned sections that describe the plan, also reference cybersecurity vulnerabilities. All of this information should be kept confidentially, as it involves critical infrastructure and provides LUMA's assessment of its vulnerabilities and how and why to address them with regards to the IT and OT Systems and Networks. It bears noting that this Bureau has kept pending proceedings on data security matters, confidentially. *See In re Review of the Puerto Rico Electric Power Authority Data Security Plan*, NEPR-MI-2020-0017.

**vi. Physical Security for Distribution Facilities, pages 150-152**

This program is targeted at the physical security of distribution facilities by replacing and repairing gates and fencing around substations. It also addresses provision of locks for distribution switches and pad mount transformers in the field and meter locks at customer metering points.

Sections 2.1, 2.2, 2.3, and 2.4 of the Physical Security for Distribution Facilities program provide content on the program for remediation, including the activities to be conducted and the types of measures to be implemented to protect assets, employees and the public. *Id.* at page 150. Additionally, Section 2.5 describes the benefits of the program with reference to the primary goals, objectives and impact, and Section 2.6 identifies the risks of failing to implement adequate security measures. *Id.* at pages 151-152. This information should be kept confidentially, as it involves critical infrastructure on distribution facilities and provides LUMA's assessment on vulnerabilities and how to address them to provide security in distribution facilities. It bears noting that this

Bureau has kept proceedings on physical security plan, confidentially. *See In re Review of the Puerto Rico Electric Power Authority Physical Security Plan*, NEPR-MI-2020-0018.

**vii. Transmission Substation Security, pages 138 through 141**

This program will focus on security concerns at transmission substations which are critical to operate the system and provide safe and reliable services. It will replace and add new security technology and hardware to deter, detect and delay security incidents at warehouses.

Sections 2.1, 2.2, 2.3, and 2.4 of the Transmission Substation Security program provide content on the current status of security measures at transmission substations, describe the program for remediation, including the activities to be conducted and the types of measures to be implemented to implement physical security controls. *Id.* at pages 138-139. Additionally, Section 2.5 describes the benefits of the program with reference to the primary goals, objectives and impacts, and Section 2.6 identifies the risks associated with not proceeding with this security program. *Id.* at pages 139-140. This information should be kept confidentially, as it involves security at transmission substations and provides LUMA's assessment on vulnerabilities and how to address them. It bears noting that this Bureau has kept proceedings on physical security plan, confidentially. *See In re Review of the Puerto Rico Electric Power Authority Physical Security Plan*, NEPR-MI-2020-0018.

**2. Confidentiality of Appendix F.2 of the SRP pages 349 through 356**

Appendix F.2 of the SRP, includes LUMA's Assessment of PREPA infrastructure, analysis and details on System Operations Technologies and Facilities, and on Telecommunications System and Networks. There are commentaries on the current vulnerabilities of portions of the systems and assets such as SCADA infrastructure and AC/DC Systems. LUMA also identifies safety risks based on deficiencies and on the current state of the assets.

Appendix F.2 of the SRP includes information on the system's current state and capability, as well as on vulnerabilities, which could have an organizational impact and potential impact on the operation of the T&D system that is part of PREPA's critical infrastructure. This information must be given protection from public disclosure.

In conclusion, the aforementioned Sections of the SRP and of Appendix F.2 of the SRP include information and programs for investments and remediation on critical infrastructure and components of PREPA systems whose function is to provide protection and security. They also involve key elements of systems that are essential for operations and critical communication components. If the information falls in the hands of people who may want to harm the system, it will certainly provide sufficient details to expose the system to risks and harms. It is important to stress that information on security systems, per the aforementioned laws and regulations, should be shielded from public disclosure indefinitely to ensure the systems' integrity and functioning.

### **C. PREPA Confidential Information**

Confidential treatment and protection should also be given to portions of Appendix D of the System Remediation Plan. Portions of said Appendix D reference confidential reports that PREPA released to LUMA under parameters of confidentiality pursuant to Section 13.2 (a) of the OMA. Said Section 13.2 of the OMA imposes duties on LUMA as the Operator to protect Owner Confidential Information. Owner Confidential Information includes certain system information furnished or made available on a confidential basis in connection with the OMA. *Id.*

Pages 333 through 334 of Appendix D to the SRP reference reports prepared by Sargent & Lundy and Navigant Consulting that LUMA, per Section 13.2 of the OMA is not authorized to publicly disclose. Because the OMA provides for the confidentiality of these reports prepared by third parties and that PREPA submitted confidentially to LUMA, the reports are protected as

contractual trade secrets per Article 4 of Act 122-2019, 3 LPR §9894 (exempting from public disclosure “information regarding trade secrets obtained by a person which are confidential under contract, statute, or court decision.”).

LUMA requests that this honorable Energy Bureau protect the referenced portion of Appendix D of the System Remediation Plan from public disclosure, unless PREPA waives such requirement and releases LUMA, from maintaining its confidentiality.

**IV. Identification of Confidential Information.**

In compliance with the Energy Bureau’s Policy on Management of Confidential Information,” CEPR-MI-2016-0009, a table summarizing the hallmarks of this request to submit portions of the SRP is hereby included:

Document	Pages in which Confidential Information Is Found	Date of Filing	Summary of Legal Basis for Confidentiality Protection	Summary of Reasons Why Each Claim Conforms to Legal Basis for Confidentiality
SRP Sections 6.1 through 6.7	Subsections 3.1, 3.2 and 3.3 Pages: 59, 68, 71, 75, 79, 86-88, 92-93, 98, 107-108, 112-113, 118-119, 123-124, 131-132, 136-137, 140-141, 148-149, 152, 156-157, 164-165, 168-169, 172-173, 176, 181, 189, 195-196, 202-203, 208-209, 213-214, 218-219, 226-227, 235, 238, 250-251, 257, 264, 271, 278, 285, 290, 294-295, 299-300, 303-304, 310, 313-314, 317-318, 321-322	2/24/21	Sensitive Commercial Information and Trade Secrets under Act 80-2011	Section III A of this Memorandum discusses and shows that the specified portions of the SRP includes information for future acquisitions of good and services that may provide unfair advantages to suppliers or proponents and could harm the public interest.

SRP, Section <b>6.5 Critical Energy Management System Upgrades</b>	Sections 2.1 -2.6, pages 166-168	2/24/21	Critical Energy Infrastructure Information 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674	Section III B of this Memorandum provides the legal basis to establish that that the specified sections of the SRP includes confidential information.
SRP Section 6.5 <b>Critical Energy Management &amp; Load Generation Balancing</b>	Sections 2.1 -2.6, Pages 178-181	2/24/21	Critical Energy Infrastructure Information 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674	Section III B of this Memorandum provides the legal basis to establish that that the specified sections of the SRP includes confidential information.
SRP Section 6.5 <b>Control Center Construction &amp; Refurbishment</b>	Sections 2.1 -2.6, Pages 170-173	2/24/21	Critical Energy Infrastructure Information 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674	Section III B of this Memorandum provides the legal basis to establish that that the specified sections of the SRP includes confidential information.
SRP Section 6.3 <b>IT OT Telecom Systems &amp; Networks</b>	Sections 2.1 -2.6, Pages 102-108	2/24/21	Critical Energy Infrastructure Information 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674	Section III B of this Memorandum provides the legal basis to establish that that the specified sections of the SRP includes confidential information.
SRP Section 6.7 <b>IT OT Cybersecurity Program</b>	Sections 2.1 -2.6, Pages 259-264	2/24/21	Critical Energy Infrastructure Information 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674	Section III B of this Memorandum provides the legal basis to establish that that the specified sections of the SRP includes confidential information.
SRP Section 6.4 <b>Physical Security for Distribution Facilities</b>	Sections 2.1 -2.6, Pages 150-152	2/24/21	Critical Energy Infrastructure Information 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674	Section III B of this Memorandum provides the legal basis to establish that that the specified sections of the SRP includes confidential information.

SRP Section 6.4 <b>Transmission Substation Security</b>	Sections 2.1 -2.6, pages 138-141	2/24/21	Critical Energy Infrastructure Information 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674	Section III B of this Memorandum provides the legal basis to establish that that the specified sections of the SRP includes confidential information.
Appendix F2 to the SRP	Pages 349-356	2/24/21	Critical Energy Infrastructure Information 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674	Section III B of this Memorandum provides the legal basis to establish that that the specified sections of the SRP includes confidential information.
Appendix D to the SRP	Pages 333-334 “Conceptual Transmission and Distribution 10- Year Capital Investment Plan, by Sargent & Lundy;  Build Back Better Report by Navigant Consulting	2/24/21	Article 4 of Act 122- 2019, 3 LPRA §9894 And Section 13.2(a) of the OMA	Section III C of this Memorandum provides the legal basis to establish that that the specified sections of the SRP includes confidential information

**WHEREFORE,** LUMA respectfully requests that the Energy Bureau **grant** this request to keep confidentially, the aforementioned portions of the SRP (Exhibit 1 of the SRP Petition) in redacted form and that it **accept** the submission for the public record of a redacted version of Exhibit 1 to the SRP Petition.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 24<sup>th</sup> day of February 2021.

I hereby certify that I filed this motion using the electronic filing system of this Energy Bureau and that I will send an electronic copy of this motion to the attorneys for PREPA, Joannely Marrero-Cruz, [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law); and Katuska Bolaños-Lugo, [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law).

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