

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

**IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS**

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Request for Partial Reconsideration of determinations of LUMA's Request for Confidential Treatment and Designation of Portions of Appendix D and of documents and attachments of Responses to Request for Information to Initial Budget.

RESOLUTION AND ORDER

I. Introduction

On February 24, 2021, LUMA ENERGY, LLC as ManagementCo, and LUMA ENERGY SERVCO, LLC as ServCo (collectively, "LUMA") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Petition for Approval of Initial Budgets and Related Terms of Service* ("February 24 Petition") in compliance with Section 6.22(a)(2) of Act 57-2014¹.

On February 24, 2021, LUMA also submitted a document titled *Request to Submit Portions of Appendix D of the Initial Budget Confidential and Memorandum of Law in Support Thereof* ("February 24 Request of Confidential Treatment"). As part of its filing, LUMA requested confidential designation and treatment for portions of Appendix D of the Initial Budgets. LUMA alleged that portions of Appendix D contain information that qualifies as sensitive commercial information and trade secrets under Act 80-2011² and Critical Energy Infrastructure Information ("CEII") under federal law,³ also protected under Puerto Rico law. LUMA requested the Energy Bureau to grant confidential designation and treatment to the referred portions of Attachments D.

On April 5, 2021, the Energy Bureau issued a Resolution and Order ("April 5 Resolution"), directing LUMA to, on or before April 12, 2021, provide information and responses to the requests for information in Attachment A of the April 5 Resolution, modify the February 24 Petition, and submit an updated Generation Budget and any related information and all documentation.

¹ Known as *The Puerto Rico Energy Transformation and RELIEF Act*, as amended.

² Known as the *Law for the Protection of Commercial and Industrial Secrets of Puerto Rico*, as amended.

³ See 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674.



On April 12, 2021, LUMA submitted a document titled *Motion in Compliance with Resolution and Order of April 5, 2021 and Submitting Responses to Requests for Information* (“April 12 Compliance Motion”). In the April 12 Compliance Motion, LUMA includes the supporting material identified by the Energy Bureau as needed to adequately conduct its evaluation and proposes an alternative to address its inability to secure the Generation Budget from PREPA in a timely manner.

On April 13, 2021, LUMA submitted a motion titled *Request to Submit Portions of LUMA’s Responses to Requests for Information Confidentially, and Memorandum of Law in Support Thereof* (“April 13 Request for Confidential Treatment”). The Request for Confidential Treatment was submitted in compliance with the April 5 Resolution. As part of its filing, LUMA requested confidential designation and treatment for several attachments or portions of LUMA’s responses to the Energy Bureau Request for Information.

On April 21, 2021, the Energy Bureau issued two (2) Resolutions and Orders (“April 21 Resolutions”) denying in part LUMA’s requests for confidential designation and treatment (for some attachments or portions of Appendix D and for some attachments or portions to the Responses to the Request for Information) made as part of the February 24 Request for Confidential Treatment and the April 13 Request for Confidential Treatment.⁴

On April 23, 2021, LUMA submitted before the Energy Bureau two motions, the first one is titled *Motion for Partial Reconsideration and Submitting Public Version of Appendix D to the Initial Budgets in Compliance with Order* (“Motion for Partial Reconsideration of Appendix D”) and the second one is titled *Motion for Partial Reconsideration and Submitting Public Version of Documents and Attachments in Compliance with Order* (“Motion for Partial Reconsideration of Attachments”). In both motions, LUMA requested the Energy Bureau to partially reconsider the April 21 Resolutions, regarding the Energy Bureau’s determinations of confidential designation and treatment.

In the Motion for Partial Reconsideration of Appendix D, LUMA requests the Energy Bureau partial reconsideration of the portion of the Resolution and Order issued on April 21 in relation to the request for confidential treatment of particular information included in some of the Sections 3.2 and the Sections 3.3 of Appendix D to the Initial Budgets. LUMA states that disclosure of those sections of the referred Appendix D will provide detailed information on hiring and acquisition needs, as well as LUMA’s assessments of the same, to potential bidders or contractors who will use the data to craft their proposals with the

⁴ See Resolution and Order, Determination on LUMA’s Request for Confidential Designation and Treatment to Portions of Attachment D of the Initial Budget, issued by the Energy Bureau on April 21, 2021. See Resolution and Order, Request to Submit Portions of LUMA’s Responses to Requests for Information Confidentially, and Memorandum of Law in Support Thereof, issued by the Energy Bureau also on April 21, 2021.



published amounts in mind. Also, LUMA alleged that their “estimated amounts may be higher than what bidders would offer have they not had access to the disclosed information, thus, negatively affecting the pricing that may be received and could result in higher costs or less value for the ratepayers of Puerto Rico.”⁵ Therefore, LUMA request the Energy Bureau to partially reconsider the April 21 Resolution; grant confidential designation and treatment of Sections 3.3 of Appendix D and of some of the Sections 3.2 of Appendix D as identified in the Motion for Partial Reconsideration of Appendix D; and accept the submission of a revised public version of Appendix D, submitted as Exhibit 1 in the Motion for Partial Reconsideration of Appendix D.

Lastly, in the Motion for Partial Reconsideration of Attachments, LUMA requests reconsideration of the Energy Bureau’s determination that LUMA shall file for the public record the following documents that were submitted under seal of confidentiality: (1) Attachments 1 and 2 to RFI-LUMA-MI-21-004-210405-PREB-0007 (Procurement Manuals); and (2) Attachment 2, to RFI-LUMA-MI-21-004-210405-PREB-0005b (excel table online inspections data). LUMA argued that Attachments 1 and 2 to LUMA’s Responses to Requests for Information are confidential summaries and working drafts of the Procurement Manuals (“Summaries of Procurement Manuals”) that they are working to approve pursuant to Sections 4.1 (e) and (f) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“OMA”). Therefore, LUMA requests reconsideration of the portion of the April 21 Resolution that requires LUMA to file for the public record, the Summaries of the Procurement Manuals. Also, LUMA states that they understand that the Energy Bureau made an involuntary mistake, denying confidential treatment to Attachment 2 to LUMA’s Response to Request for Information number 5b which is identical to attachments 1, 3, 4, and 5 to LUMA’s Response to Request for Information number 5b, attachment 2 includes in excel table format, the data obtained from the checklists filed as Attachment 1 to LUMA’s Response to Request for Information number 5b and that the Energy Bureau designated as Confidential Information. Therefore, LUMA request partial reconsideration of the April 21 Resolution; to grant confidential designation and treatment of (1) Attachments 1 and 2 to (Procurement Manuals) and (2) Attachment 2, (excel table online inspections data) and accept the submission of a revised public version of LUMA’s Responses to the Requests for Information on Initial Budgets as identified in Section V of Motion for Partial Reconsideration of Attachments.

II. Applicable Law and Analysis

Pursuant to Section 11.01 of Regulation 8543,⁶ and the provisions of Act 38-2017, “Any party dissatisfied with the Energy Bureau final decision may file a motion for reconsideration before the Energy Bureau, which shall state in detail the grounds supporting the petition and the remedy that, according to petitioner, the Energy Bureau should have

⁵ See Motion for Partial Reconsideration and Submitting Public Version of Appendix D to the Initial Budgets in Compliance with Order, pages 1-2, submitted by LUMA on April 23, 2021 at 9:09 p.m.

⁶ Known as the Uniform Administrative Procedures Act of the Government of Puerto Rico (“UAPA”), as amended.



granted." The affected party shall file and served its motion for reconsideration under the terms and provisions of the "UAPA".

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In both Motions for Partial Reconsideration submitted by LUMA on April 23, 2021, LUMA alleges that several attachments or portions of Appendix D and several attachments or portions of the Responses to the Requests for Information, that the Energy Bureau did not grant confidential designation and treatment include: confidential information in critical energy infrastructure information or critical electric infrastructure information ("CEII") that garners protection from public disclosures under federal statutes and regulations;⁷ sensitive commercial information and trade secrets under Act 80-2011;⁸ confidential information that LUMA received from the Puerto Rico Electric Power Authority ("PREPA") under Section 13.2 (a) of the Operating Management Agreement ("OMA")⁹ that therefore is also protected under Puerto Rico law.¹⁰ LUMA requests the Energy Bureau to grant confidential designation and treatment to the referred attachments or portions of Appendix D and of the Responses to Requests for Information.

Act 57-2014¹¹ establishes that any person having the obligation to submit information to the Energy Bureau, can request privilege or confidential treatment to any information that the party submitting understands deserves such protection.¹² Specifically, Act 57-2014 requires the Energy Bureau to treat as confidential the submitted information provided that "the Energy Bureau, after the appropriate evaluation, believes such information should be protected".¹³ In such case, the Energy Bureau "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."¹⁴

After analyzing LUMA's arguments in both motions for partial reconsideration and the applicable law, the Energy Bureau determines to **GRANTS** confidential designation and treatment, under Article 6.15 of Act 57-2014, to the items (attachments or portions of

⁷ 6 U.S.C. §§ 671-674; 18 C.F.R. §388.113 (2020).

⁸ Known as the *Law for the Protection of Commercial and Industrial Secrets of Puerto Rico*, as amended.

⁹ See *Request to Submit Portions of LUMA's Responses to Requests for Information Confidentially, and Memorandum of Law in Support Thereof*, page 11.

¹⁰ Known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

¹¹ *Id.*

¹² Section 6.15 of Act 57-2014, as amended.

¹³ *Id.*

¹⁴ *Id.* (Emphasis added).



Appendix D and the attachments or portions of the Responses to the Request for Information), contained in Table 1 below.

Table 1: Information Designated as Confidential

Motion for Partial Reconsideration of Appendix D		
Appendix D presented by LUMA February 24, 2021	Pages	Energy Bureau Determination
Distribution Streetlighting Section 3.3	95	Grants Confidential Designation and Treatment only to the first and fourth bullet in Section 3.3
HR Programs, Section 3.3	360-361	Grants Confidential Designation and Treatment only to the first bullet in Section 3.3
Waste Management, Section 3.3	438	Grants Confidential Designation and Treatment only to the third bullet in Section 3.3
Motion for Partial Reconsideration of Attachments		
Responses to Request of Information presented by LUMA April 12, 2021	Attachments	Energy Bureau Determination
RFI-LUMA-MI-21-0004-210405-PREB-007	Attachments 1 and 2 Federally Funded Procurement Manual and Non-Federally Funded Procurement Manuals ("Procurement Manuals").	Grants Confidential Designation and Treatment
RFI-LUMA-MI-21-004-210405-PREB-0005(b).	Attachment 2 Critical Energy Infrastructure Information on Distribution Lines Inspections	Grants Confidential Designation and Treatment

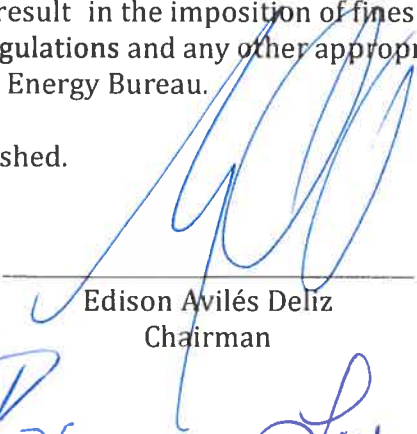
Upon further review of the documents filed by LUMA as part of the April 12 Compliance Motion, the Energy Bureau **DETERMINES** to partially reconsider its determination on confidentiality as established in the April 21 Resolutions. Therefore, the Energy Bureau **WITHDRAWS** its determination of partial confidentiality to the response referenced as RFI-LUMA-MI-21-0004-210405-PREB-002 and its Attachment 1 in Excel format, determining that it is all public information.



The Energy Bureau **ORDERS** LUMA to submit, **on or before Friday April 30, 2021 at 12:00 p.m.**, a revised redacted (*i.e.*, public) version of the attachments or portions of Appendix D, and the unredacted version of response RFI-LUMA-MI-21-0004-210405-PREB-002 and its Attachment 1, in accordance with this Resolution and Order. It is important to note that the commencement of the Technical Conference scheduled in the instant case for May 3-5, 2021 is predicated in LUMA's timely compliance with this Resolution and Order.

The Energy Bureau **WARNS** LUMA that, noncompliance with any provision of this Resolution and Order, may result in the imposition of fines pursuant to Act 57-2014 and applicable Energy Bureau's regulations and any other appropriate administrative sanctions, as deemed appropriate by the Energy Bureau.

Be it notified and published.



Edison Avilés Deliz
Chairman



Ángel R. Rivera de la Cruz
Associate Commissioner



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on April 29, 2021. I also certify that on April 29, 2021 a copy of this Resolution and Order was notified by electronic mail to the following: margarita.mercado@us.dlapiper.com, kbolanos@diazvaz.law and jmarrero@diazvaz.law. I also certify that today, April 29, 2021, 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 April 29, 2021.


Sonia Seda Gaztambide
Clerk

