

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

NEPR Received: Apr 23, 2021 10:28 PM

IN RE: REVIEW OF LUMA'S
INITIAL BUDGETS

CASE NO. CEPR-MI-2021-0004

SUBJECT: Request for partial reconsideration of determination on LUMA's Request for Confidential Designation of Responses to Requests for Information on Initial Budgets and submitting public version of Responses in compliance with order.

**MOTION FOR PARTIAL RECONSIDERATION AND SUBMITTING PUBLIC
VERSIONS OF DOCUMENTS AND ATTACHMENTS IN COMPLIANCE WITH
ORDER**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC ("ManagementCo"), and **LUMA Energy ServCo, LLC** ("ServCo"), (jointly referred to as "LUMA"), and respectfully state and request the following:

I. Introduction

LUMA herein requests partial reconsideration of portions of the Resolution and Order issued by this honorable Puerto Rico Energy Bureau ("Energy Bureau" and/or "Bureau") on April 21, 2021, denying in part, LUMA's request for confidential treatment of several documents and attachments that LUMA filed on April 12, 2021 in response to the Requests for Information issued by this Bureau on April 5, 2021 in relation with LUMA's proposed Initial Budgets ("April 21st Order").

As outlined in this Motion, LUMA respectfully requests reconsideration of the 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 on line inspections data).

As will be explained in Section V, *infra*, except for the aforementioned documents that LUMA requests should be maintained confidentially, with this Motion, LUMA is submitting public versions of the documents that were identified by this honorable Bureau in Table 3, at page 11 of the April 21st Order, as Designated Public Information and redacted copies of certain attachments as requested at pages 8 through 10 of the April 21st Order.

II. Procedural Background

On February 24, 2021, LUMA filed a *Petition for Approval of Initial Budgets and Related Terms of Service* (“Initial Budgets Petition”). On April 5, 2021, this honorable Energy Bureau issued a Resolution and Order on “Completeness of LUMA’s Initial Budgets Filing.” (“April 5th Order”). *See* April 5th Order at page 3. Among others, in the April 5th Order this Bureau directed LUMA to, within five days, provide information and responses to requests included in Attachment A (“Requests for Information”).

On April 6, 2021, LUMA submitted clarifications to the proposed Initial Budgets. Then, on April 12, 2021, in compliance with the April 5th Order, LUMA filed before this honorable Bureau, its responses to the Requests for Information (“LUMA’s Responses to Requests for Information”). LUMA also included a *Request to Submit Portions of LUMA’s Responses to Requests for Information Confidentially and Memorandum of Law in Support Thereof* (“Request for Confidential Treatment”).

On April 20, 2021, this Bureau issued a procedural calendar to discuss LUMA’s proposed Initial Budgets. Then, on April 21, 2021, this Bureau adjudicated LUMA’s Request for Confidential Treatment, granting and denying in part LUMA’s Request for Confidential Treatment.

This Bureau granted Confidential designation of several attachments to LUMA’s Responses to Requests for Information, *see* table 2 at pages 8 through 10 of the April 21st Order. With regards to several of the documents that the Bureau designated as Confidential, the Bureau ordered LUMA to file redacted public versions. *Id.* However, the Bureau denied confidential treatment of ten documents or attachments to LUMA’s Responses to Requests for Information. *See* Table 3 at page 11 of the April 21st Order. The Resolution and Order does not include the reasons for said partial denial.

This honorable Energy Bureau granted LUMA two days, to expire on April 23rd 2021, to file unredacted or public versions of the documents that it designated as Public Information. The April 21st Order does not provide notice to LUMA of the right to request reconsideration or seek judicial review.

III. Applicable Standard to a Motion for Reconsideration

Under Section 11.01 of Bureau Regulation 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*: “Any party dissatisfied with the Commission’s final decision may file a motion for reconsideration before the Commission, which shall state in detail the grounds supporting the petition and the remedy that, according to petitioner, the Commission should have granted.” Section 11.01 adds that this request shall be filed and served in accordance with the terms and provisions of the Puerto Rico Uniform Administrative Procedure Act, Act 170 of August 12, 1988, which was repealed and substituted by Act 38-2017. Act 38-2017, on Section 3.15, 3 P.R. Laws Ann. § 9655, and allows a party adversely affected by a partial or final resolution or order to request reconsideration within 20 days of the notification of the resolution or order.

Moreover, regarding the specific issue of the filing of confidential information with this Bureau, the Bureau Resolution titled *In Re: Policy on Management of Confidential Information in Procedures before the Commission*, CEPR-MI-2016-0009, issued August 31, 2016 (“Confidential Management Policy”), as amended, states on Section C(5), that “[i]f the Commission denies a confidentiality claim, the Commission will disclose such information within thirty (30) days from the date its determination is notified, unless the Producing Party requests reconsideration, judicial review, or any other remedy it deems appropriate, which will interrupt the thirty (30) day term to disclose such information.”

Pursuant to the aforementioned provisions, LUMA is timely filing this request for partial reconsideration.

IV. Discussion in Support of Request for Partial Reconsideration

A. RFI-LUMA-MI-21-0004-210405-PREB-007, Attachments 1 and 2, Federally Funded Procurement Manual and Non-Federally Funded Procurement Manuals (“Procurement Manuals”).

It is respectfully submitted 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 LUMA is working to approve pursuant to Sections 4.1 (e) and (f) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“OMA”). LUMA filed Summaries of the Procurement Manuals in good faith and confidentially, to comply with the Bureau’s request for information. LUMA explained, however, that the Procurement Manuals themselves have not yet been finalized and thus, could not yet be provided. As LUMA stated in its Request for Confidential Treatment, the Summaries of the Procurement Manuals are working documents that have not been disclosed and that LUMA has taken steps to protect as sensitive commercial information.

Section D of the Bureau's Confidential Management Policy states 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.

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.

Under the Industrial and Trade Secret Protection Act of Puerto Rico, Act 80-2011, 10 P.R. Laws Ann. §§ 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 (emphasis added).¹ 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. *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

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 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.*

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 Summaries of the Procurement Manuals reveal LUMA's private and pre-decisional assessments and processes in preparing and designing manuals that will rule procurement processes per the OMA. LUMA appreciates the Bureau's interest in transparency and that is why LUMA has filed for the public record in this and other Bureau proceedings, thousands of pages and thousands of lines of data, as well as detailed information on its assessments and work over the last ten months during the Front-End Transition Period. However, as a matter of law, it is respectfully submitted that the Summaries of the Procurement Manuals are private working document that are not subject to public review. Neither the OMA nor any legal provision that LUMA has been able to identify, requires public disclosure of drafts of LUMA's internal documents.

Because the Summaries of the Procurement Manuals are a part of draft documents that are subject to discussions and final approval by LUMA and the Public-Private Partnerships Authority ("P3 Authority") (Non Federally Funded Procurement Manual) and by LUMA, the P3 Authority and the Central Office for Recovery Reconstruction and Resiliency of Puerto Rico ("COR3") (Federally Funded Procurement Manual), their disclosure will inure more harm to the public interest than good, given that the public will not be reading a finalized or approved version of the documents. Premature public disclosure of these summaries and of information concerning the Procurement Manuals, will harm LUMA's commercial interests by requiring untimely disclosure of LUMA's

private and confidential working documents that do not currently reflect the full or final scope of the Procurement Manuals.

The right of the public to access information relevant to the Bureau's consideration of LUMA's Initial Budgets is duly protected and promoted with the disclosure of the public versions of the Initial Budgets and of the response to the Requests for Information that are already on the record and those that are being filed today in compliance with the April 21st Order. The designation of the Summaries of the Procurement Manuals as confidential will not preclude the public in any material or cognizable manner, from gaining access to relevant and necessary information concerning LUMA's proposed Initial Budgets.

Respectfully, the Summaries of the Procurement Manuals do not provide information that is relevant for citizens to evaluate the adequacy of LUMA's proposed spending programs nor to understand and learn about the proposed allocation of ratepayers funds. Any possible interest in public viewing the information that LUMA hereby requests be kept confidential is outweighed by the harm to be caused to LUMA and to the public interest if summaries of draft internal commercial documents are disclosed.

It bears noting that because the Summaries of the Procurement Manuals pertain to draft working documents to be shared with the P3 Authority, a public corporation, they would also garner protection as official decisional working papers for internal deliberative processes by the P3 Authority that are entitled to protection under Article 4(iv) of the "Puerto Rico Open Government Data Act," Act 122-2019, 3 P.R. Laws Annot. §§9894(iv) (codifying the deliberative process privilege as an exception to public data disclosures and stating that it covers "public information as to which any of the privileges recognized in the Constitutions of the United States or Puerto Rico,

laws and Rules of Evidence, including official information that is part of the decision making process in deliberative processes regarding public policy as recognized by jurisprudence.”).

LUMA respectfully requests reconsideration of the portion of the April 21st Order that requires LUMA to file for the public record, the Summaries of the Procurement Manuals.

B. Critical Energy Infrastructure Information on Distribution Lines Inspections, Attachment 2, to RFI-LUMA-MI-21-004-210405-PREB-0004(b).

In the April 21st Order, this honorable Bureau designated Attachments 1, 3, 4 and 5 to LUMA’s Response to Request for Information number 5(b) (RFI-LUMA-MI-21-004-210405-PREB-0005(b)), as Confidential Information, correctly concluding that these attachments on distribution and substations inspections and transmission and distributions substations, include Critical Energy Infrastructure Information (“CEII”). In what we respectfully understand was an involuntary mistake, the Bureau denied confidential treatment to Attachment 2 to LUMA’s Response to Request for Information number 5b. 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 that were filed as Attachment 1 to LUMA’s Response to Request for Information number 5b and that the Bureau designated as Confidential Information.

Because attachment 2 to LUMA’s Response to Request for Information number 5b, includes information on critical energy infrastructure in the form of data on distribution lines inspections, *see e.g.*, 6 U.S.C. §§ 671-674; 18 C.F.R. §388.113 (2020), and the Bureau’s Policy on Confidential Information, LUMA respectfully requests reconsideration of the portion of the April 21st Order that ordered LUMA to publish this attachment and that designated the same as Public Information, *see* April 21st Order at page 11.

V. Inventory of Documents Publicly Filed with this Motion

In compliance with Sections 13.2 (b)(i)² and 13.2(c)(ii)³ of the OMA, LUMA notified PREPA of the Bureau's order to file for the public record documents and attachments that LUMA had filed confidentially to protect PREPA's Confidential Information. In response, PREPA's counsel informed that PREPA will not seek a protective order with regards to those documents that LUMA had designated as PREPA Confidential Information and that this Bureau ordered should be disclosed. As ordered by this Bureau and pursuant to Section 13.2(b)(i)⁴ of the OMA, LUMA is hereby complying with the April 21st Order and is submitting for the public record, the documents identified in the table below that it had previously filed under seal of confidential to protect PREPA's Confidential Information and per its duties under Section 13.2 of the OMA.

²Section 13.2 (b)(i) of the OMA provides that:

(b) Permitted Disclosures. (i) Subject to the terms of this Section 13.2 (Proprietary Information), each receiving Party may disclose Confidential Information of the disclosing Party to a duly authorized Governmental Body where required to do so by Applicable Law. None of the Parties shall have any liability whatsoever to the other Party in the event of any unauthorized use or disclosure by a Governmental Body of any Confidential Information of another Party to the extent such disclosure was required by Applicable Law and was in accordance with the requirements of this Section 13.2 (Proprietary Information).

³ Section 13.2(c)(ii) of the OMA provides that:

(ii) in connection with requests or orders to produce Confidential Information protected by this Agreement in the circumstances provided in Section 13.2(b) (Proprietary Information – Permitted Disclosures), each Party receiving such a request or order (A) shall promptly notify the disclosing Party of the existence, terms and circumstances of such requirement(s) so that the disclosing Party may seek an appropriate protective order or waive compliance with the provisions of this Agreement, and (B) shall, and shall cause its Representatives to, cooperate fully with the disclosing Party in seeking to limit or prevent such disclosure of such Confidential Information. . . .

⁴ Section 13.2(b)(i) of the OMA provides that:

(i) Subject to the terms of this Section 13.2 (Proprietary Information), each receiving Party may disclose Confidential Information of the disclosing Party to a duly authorized Governmental Body where required to do so by Applicable Law. None of the Parties shall have any liability whatsoever to the other Party in the event of any unauthorized use or disclosure by a Governmental Body of any Confidential Information of another Party to the extent such disclosure was required by Applicable Law and was in accordance with the requirements of this Section 13.2 (Proprietary Information).

The table below enumerates the documents and attachments to LUMA’s Responses to Requests for Information that are being filed today for the public record in compliance with the April 21st Order:

Document	Document Type	Pages in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection	LUMA Actions in Compliance with PREB Resolution and Order
RFI-LUMA-MI-21-0004-210405-PREB-001-Attachment 1	Excel	N/A	PREPA Confidential Information	All irrelevant comments or notes have been eliminated and the Excel is now fully public.
RFI-LUMA-MI-21-0004-210405-PREB-002-Attachment 1	Excel	Tabs 1-3	PREPA Confidential Information	Redacted Public Version removing all irrelevant comments or notes.
RFI-LUMA-MI-210405-PREB-003-Attachment 2	PDF	N/A	N/A	Unredacted version filed.
RFI-LUMA-MI-21-004-210405-PREB-003-Attachment 3	Excel	N/A	N/A	Unredacted version filed.
RFI-LUMA-MI-21-004-210405-PREB-003-Attachment 4	PDF	N/A	N/A	Unredacted version filed.
RFI-LUMA-MI-21-004-210405-PREB-004	PDF	N/A	N/A	Unredacted version filed.
RFI-LUMA-MI-21-0004-210405-PREB-005b Attachment 1 (Distribution Line Inspection Checklist)	PDF	Pages 1-8; Pages 10-14; Pages 16-20; Pages 22-26; Pages 28-32; Pages 34-38; Pages 40-44; Pages 46-50; Pages 52-56; Pages 58-61	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674 Sensitive Commercial Information under Act 80-2011	Redacted Public Version removing all irrelevant comments or notes.

Document	Document Type	Pages in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection	LUMA Actions in Compliance with PREB Resolution and Order
RFI-LUMA-MI-21-0004-210405-PREB-005b Attachment 3 (Substation Inspection Checklist)	PDF	Pages 1-289	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674 Sensitive Commercial Information under Act 80-2011	Redacted Public Version removing all irrelevant comments or notes.
RFI-LUMA-MI-21-0004-210405-PREB-005b Attachment 4 (Transmission Substations)	PDF	Pages 1-9	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674	Redacted Public Version removing all irrelevant comments or notes.
RFI-LUMA-MI-21-0004-210405-PREB-005b Attachment 5 (Distribution Substations)	PDF	Pages 1-13	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674	Redacted Public Version removing all irrelevant comments or notes.
RFI-LUMA-MI-21-0004-210405-PREB-008	PDF	N/A	N/A	Unredacted version filed.
RFI-LUMA-MI-21-0004-210405-PREB-008 Attachment 1	Excel	N/A	N/A	Unredacted version filed.

WHEREFORE, LUMA respectfully requests this Honorable Bureau to **partially reconsider** its Resolution and Order of April 21st as requested in this Motion, **grant** confidential designation and treatment of (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 on line 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 this Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 23rd day of April 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; and Katuska Bolaños-Lugo, kbolanos@diazvaz.law.



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