

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

IN RE: REVIEW OF T&D’S OPERATORS
SYSTEM OPERATION PRINCIPLES

CASE NO. NEPR-MI-2021-0001

SUBJECT: Request for Confidential Treatment of
Portions of Responses to Requests for Information on
System Operation Principles Filing.

**REQUEST TO SUBMIT PORTIONS OF LUMA’S RESPONSES TO REQUESTS
FOR INFORMATION CONFIDENTIALLY, 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

On February 25, 2021, LUMA filed before this Honorable Puerto Rico Energy Bureau (“Energy Bureau”) a Petition for Approval of LUMA’s System Operation Principles (“SOP Petition”), pursuant to LUMA’s obligations under Section 4.1 (h) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020, executed by and among LUMA, the Puerto Rico Electric Power Authority (“PREPA”) and the Puerto Rico Public-Private Partnerships Authority (“P3 Authority”) (“OMA”).

On April 6, 2021, this honorable Energy Bureau issued a Resolution and Order where, among others, the Bureau directed LUMA to, within ten days, provide information and responses to requests included in Attachment A to the April 6th Order (“Requests for Information”). Today,

LUMA is filing before this honorable Energy Bureau its responses to the eleven requests for information that are included in Attachment A to the April 6th Order (“Responses to Requests for Information”). The Responses to Requests for Information are accompanied by several attachments some of which will be filed for the record using the Bureau’s electronic filing platform, while others will be sent by email as they are being submitted in Excel table format.

As will be explained below, LUMA’s response to request for information number 2 and the attachments to LUMA’s responses to requests for information numbers 10 and 11, include confidential information and assessments of critical energy infrastructure information or critical electric infrastructure information (“CEII”) that garner 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, issued on August 31, 20216. The CEII involves information on the Emergency Management System (“EMS”) and the Control Center which are both critical transmission and distribution assets. LUMA’s response to request for information number 2 includes information on vulnerabilities of said critical components of the transmission and distribution systems. Also, the attachments to LUMA’s responses to requests for information numbers 10 and 11 include information and assessments on transmissions substations, generation plants and generation assets that are critical to the electric power system. It is respectfully submitted that public disclosure of this information would expose the electric power grid to attacks or threats to the detriment of the public interest.

Also, the attachment to LUMA’s response to request for information number 11, relies upon and/or mentions information that LUMA received from PREPA confidentially. Thus,

Section 13.2(a) of the OMA, provides additional basis to file and maintain this information confidentially.

In compliance with the Bureau's Policy on Management of Confidential Information, LUMA submits this request and supporting memorandum of law that identifies and explains the legal basis for the confidential treatment of portions of the Responses to Requests for Information and of several of the attachments to the same, that have been submitted today before this Bureau.

In compliance with the Energy Bureau's Policy on Management of Confidential Information," CEPR-MI-2016-0009, LUMA submitted today for the public record, "redacted" and/or "public" versions of the following: (1) LUMA's response to request for information number 2; and (2) the attachment to LUMA's responses to requests for information number 11. As is explained in the table below at Section IV, the attachment to LUMA's response to request for information number 10 is confidential in its entirety and thus cannot be redacted. It is also in excel table format which further impedes redactions. Thus, a public redacted version of said attachment (duly identified in the table below) cannot be generated for submission. It is requested that the Bureau accept the attachment to LUMA's response to request for information number 10 in confidential form and that the Bureau waive the requirement to file a redacted version of the same. Finally, a "non-Redacted" or "confidential" version of LUMA's response to request for information number 2, and of the attachment to LUMA's response to request for information number 11 will be sent via e-mail message to the Bureau's clerk's office, as allowed by the Bureau's 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 of portions of the Responses to Requests for Information

is narrowly tailored to specifically protect the information that has been identified as confidential according to applicable law and regulations on CEII and/or sensitive commercial information..

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,” CEPR-MI-2016-0009, details the procedures that a party should follow to request that a document or portion thereof, should 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, includes 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 “redacted” or “public version” and an “unredacted” or “confidential” version of the document that contains confidential information. *Id.* paragraph 6.

The aforementioned Bureau policy on management of confidential information in procedures 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. 57-2015, 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. Critical Energy/Electric Infrastructure Information (CEII)

LUMA’s response to request for information number 2 and the attachments to LUMA’s responses to requests for information numbers 10 and 11 reference and discuss critical energy infrastructure information that, under relevant Federal Law and Regulations, is protected from public disclosure and receives confidential treatment. In several proceedings, this Energy Bureau has considered and/or granted requests by PREPA to submit CEII under seal of confidentiality.¹

¹ *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); *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).

In at least two proceedings on Data Security,² and Physical Security,³ 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 assets and information 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.

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

² *In re Review of the Puerto Rico Electric Power Authority Data Security Plan*, NEPR-MI-2020-0017.

³ *In re Review of the Puerto Rico Electric Power Authority Physical Security Plan*, NEPR-MI-2020-0018.

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).⁴

⁴ 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
 - (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.

As identified in the table at Section IV *infra*, LUMA's response to request for information number 2 references CEII as it includes an assessment of the EMS, its capabilities and vulnerabilities and, importantly, discusses the improvement needs in connection with LUMA's planned acquisition of a new EMS. It also discusses the Control Center. The EMS and the Control Center are critical infrastructure and essential elements of system operations on transmission and distribution of energy. Both are protected systems whose detailed functioning LUMA is not in a position to disclose without exposing the systems to vulnerabilities and threats. If LUMA's assessments in its response to request for information number 2 on the current state and needs of the EMS and of the Control Center are disclosed, the information would expose the system to risks and harms and hamper LUMA's efforts towards acquiring a new EMS.

Similarly, the attachments to LUMA's responses to requests for information numbers 10 and 11 include information, details and assessments of critical components of generation, transmission and distribution assets. The attachments that have been identified in the table below as containing CEII involve critical elements of systems and assets that are essential for LUMA's operations. 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.

B. PREPA Confidential Information

The attachment to LUMA's response requests for information number 11 also references and relies in part on information on generation plants and generation assets that LUMA received confidentially from PREPA 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.* LUMA requests that this honorable Energy Bureau protect and maintain said attachment confidentially.

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 LUMA’s response to request for information number 2 and the attachments to LUMA’s responses to requests for information numbers 10 and 11, confidentially:

Document	Document Type	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
SOP02 CONFIDENTIAL INFORMATION					
RFI-LUMA-MI-21-0001-210406-PREB-002	PDF	Response		Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674	Section III A of this Memorandum discusses provides the legal basis to establish that the specified sections of the RFI-LUMA-MI-21-0001-210406-PREB-002 includes confidential information.
SOP10 CONFIDENTIAL INFORMATION					
RFI-LUMA-MI-21-0001-210406-PREB-010 Attachment 1	Excel	Entire Document **		Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674	Section III A of this Memorandum discusses provides the legal basis to establish that the specified sections of the RFI-LUMA-MI-21-0001-210406-PREB-0010 includes confidential information.
SOP11 CONFIDENTIAL INFORMATION					
RFI-LUMA-MI-21-004-210406-PREB-011-Attachment 1	PDF	Pages 3-30		Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6	Section III A of this Memorandum discusses provides the legal basis to establish that the specified sections of the

Document	Document Type	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
				U.S.C. §§ 671-674. PREPA Confidential Information	RFI-LUMA-MI-21-0001-210406-PREB-011 includes confidential information. Sections III B of this Memorandum shows that the specified portions of RFI-LUMA-MI-21-004-210406-PREB-011-Attachment 1 includes PREPA proprietary information subject to confidential treatment pursuant to the OMA.

** It is impractical or not feasible to redact this document due to formatting and/or because its entire contents are confidential. It is requested that the Bureau accept the confidential unredacted version of this document and that it is kept confidentially.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **grant** this request to keep confidentially LUMA’s response to request for information number 2, and the attachments to LUMA’s responses to requests for information numbers 10 and 11, **accept** the submission for the public record of a redacted version of the confidential response to request for information number 2 and the attachment to LUMA’s responses to requests for information number 11, and **accept** the confidential filing of the attachment to LUMA’s response to request for information number 10 (excel table) whose entire contents are confidential and thus cannot be filed in redacted form.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 15th 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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