

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

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IN RE: REVIEW OF LUMA’S INITIAL BUDGETS

CASE NO. NEPR-MI-2021-0004

SUBJECT: Memorandum of Law in Support of Request for Confidential Treatment of Portions of Submission of Additional Information Requested in Technical Conference, Supplemental Responses to Questions and Clarifications on the Initial Budgets Filings

MEMORANDUM OF LAW IN SUPPORT OF REQUEST TO SUBMIT PORTIONS OF LUMA’S SUBMISSION OF ADDITIONAL INFORMATION RELATED TO THE INITIAL BUDGETS CONFIDENTIALLY

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 April 20, 2021, the honorable Puerto Rico Energy Bureau (“Bureau”) issued a Resolution and Order that set a procedural calendar in this proceeding and included a technical conference scheduled for May 3rd, 4th and 5th, 2021 (“April 20th Order”). The April 20th Order also directed that LUMA would have until May 7, 2021, to file additional information that the Bureau could require during the technical conference.

The technical conference was held on May 3rd, 4th and 5th, 2021. Throughout the three days of the technical conference, Commissioners and Bureau consultants issued requests for additional information. Similarly, LUMA representatives offered and requested leave to file additional

information or responses with regards to several topics, and/or to provide written clarification on several matters. The Bureau issued bench orders granting LUMA leave to provide additional information or supplemental written responses to certain questions and/or to submit clarifications on or before May 7, 2021.

On May 7, 2021, LUMA filed before the Bureau a “Motion for Submission of Additional Information Requested in Technical Conference, Supplemental Responses to Questions and Clarifications” (“Motion Submitting Additional Information”). The Motion Submitting Additional Information included two partially confidential responses (“Responses”), to wit, TC-RFI-LUMA-MI-21-0004-210503-PREB-010 and TC-RFI-LUMA-MI-21-0004-210503-PREB-013. Attachment 1 to TC-RFI-LUMA-MI-21-0004-210503-PREB-013 was also submitted to the Bureau under seal of confidentiality (together with Responses TC-RFI-LUMA-MI-21-0004-210503-PREB-010 and TC-RFI-LUMA-MI-21-0004-210503-PREB-013, the “Confidential Responses”). Additionally, LUMA submitted for the record using the Bureau’s electronic filing system, a “public” version of the Responses and attachments, as well as “redacted” versions of the Confidential Responses. A “non-Redacted” or “confidential” version of the Confidential Responses was submitted both through the Bureau’s electronic filing (with the exception of attachment 1 of TC-RFI-LUMA-MI-21-0004-210503-PREB-013 which was submitted in Excel format) and via e-email message to the Bureau’s clerks’ office.

At page 5, the Motion Submitting Additional Information, paragraph 5, LUMA explained that a separate supporting legal memorandum would be filed forthwith in compliance with the Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, and partially amended on September 16, 2016 (“Bureau’s Policy on Confidential Information”).

As will be explained in this Memorandum, the Confidential Responses, include LUMA proprietary confidential information and sensitive financial and commercial information protected under Act 80-2011 and Article 4 of Act 122-2019.

In compliance with the Bureau's Policy on Confidential Information, LUMA submits this supporting Memorandum of Law that further identifies the Confidential Responses and states the legal basis for the requested confidential treatment.

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 Confidential Responses is narrowly tailored to specifically protect the information that has been identified as confidential pursuant to applicable law.

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

The bedrock provision on management of confidential information that is filed before this 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" 22 LPRA §1054n. 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 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 requires identification of the confidential information and the . . . 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, as amended by the Resolution of September 16, 2016, CEPR-MI-2016-0009. 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 “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:

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.

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

Under the Industrial and Trade Secret Protection Act of Puerto Rico, Act 80-2011, 10 P.R. Laws Annot. §§ 4131-4144, 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. 80-2011.¹ They include, but are not limited to, processes, methods and mechanisms, manufacturing processes, formulas, projects or patterns to develop machinery and

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

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).

Also, Article 4 of Puerto Rico's Open Data Law, Act 122-2019, exempts the following from public disclosure: (1) commercial or financial information whose disclosure will cause competitive harm; and (2) trade secrets protected by a contract, statute of judicial decision. *See* Act 122-2019, Articles 4 (ix) and (x).

Response TC-RFI-LUMA-MI-21-0004-210503-PREB-010 includes commercial information on LUMA's contract with Innovative Energy Management (IEM) regarding federal funds management. In the technical conference, the Bureau requested very particular information on the contractual relationship between LUMA and IEM with regards to procurements. LUMA provided the information with reference to the text of the contract between LUMA and IEM. Said text has not been divulged to the public as it is a contractual arrangement between LUMA and IEM, protected under Puerto Rico law. Both parties to the contract have kept the text of the agreement confidentially. In due course, LUMA's procurement processes will be divulged to the public through the Federally Funded Procurement Manual and Non-Federally Funded Procurement Manual. Currently, there is no public interest or benefit to divulge the details of a contract between private parties. It is respectfully requested that the portion of TC-RFI-LUMA-MI-21-0004-210503-

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.*

PREB-010 that references the text of the contract between LUMA and IEM, be received and maintained confidentially.

Secondly, portions of TC-RFI-LUMA-MI-21-0004-210503-PREB-013 and its attachment, were submitted confidentially with this Bureau because they reference portions of Attachment 2 to LUMA's Response to the Bureau's Request for Information Number 9, RFI-LUMA-21-0004-210405-PREB-009 Attachment 2, which was filed under seal of confidentiality and was designated as confidential by the Bureau in a Resolution and Order issued on April 21, 2021, page 10, Table 2. TC-RFI-LUMA-MI-21-0004-210503-PREB-013 and its attachment reference portions of LUMA's original supporting work papers and work product with estimations, methods and assumptions underlying LUMA's Initial Budgets as well as detailed financial information on expenditure categories by year for certain services. The same justifications that this honorable Bureau applied to protect Attachment 2 to LUMA's Response to the Bureau's Request for Information Number 9, RFI-LUMA-21-0004-210405-PREB-009 Attachment 2 from disclosure, apply to the portions of TC-RFI-LUMA-MI-21-0004-210503-PREB-013 and its attachment that were submitted confidentially before this Bureau on May 7, 2021.

LUMA requests that the Confidential Responses, identified in Table Section IV, *infra*, as commercially sensitive information be maintained confidentially before this Bureau as they contain sensitive commercial information whose premature disclosure would also contravene public policy 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 contractual requirements and within annual budget constraints.

IV. Identification of Confidential Information.

In compliance with the Bureau’s Policy on Management of Confidential Information,” CEPR-MI-2016-0009, a table summarizing the hallmarks of this request to submit several Attachments to the Responses to Requests for Information, 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
TC-RFI-LUMA-MI-21-0004-210503-PREB-010	PDF	One page Response	May 7, 2021	LUMA Proprietary Confidential Information and Sensitive Commercial Information Protected under Section 13.2 of the OMA, under Act 80-2011 and Article 4 of Act 122-2019	Section III A of this Memorandum provides the legal basis to establish that the specified sections of the TC-RFI-LUMA-MI-21-0004-210503-PREB-010 includes confidential information.
TC-RFI-LUMA-MI-21-0004-210503-PREB-013	PDF	Portions at Page 2	May 7, 2021	Sensitive Financial and Commercial Information Protected by Act 80-2011 and Article 4 of Act 122-2019.	Section III A of this Memorandum provides the legal basis to establish that the specified sections of the TC-RFI-LUMA-MI-21-0004-210503-PREB-013 includes confidential information.
TC-RFI-LUMA-MI-21-0004-210503-	Excel	Portions in tabs 5.2.1 Customer Service,	May 7, 2021	Sensitive Financial and Commercial Information	Section III A of this Memorandum provides the legal basis to establish

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
PREB-013 Attachment 1		5.2.1 Operations, 5.2.1 Utility Transformation and 5.2.1. Support Services		Protected by Act 80-2011 and Article 4 of Act 122-2019.	that the specified sections of the TC-RFI-LUMA-MI-21-0004-210503-PREB-013 Attachment 1 includes confidential information.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **grant** LUMA's request to keep confidentially portions of the aforementioned Confidential Responses that were filed on May 7, 2021.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 14th day of May 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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