

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

NEPR Received: Jun 14, 2021 9:09 AM
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IN RE:

CASE NO. NEPR-MI-2019-0006

PUERTO RICO ELECTRIC POWER
AUTHORITY'S EMERGENCY RESPONSE
PLAN

SUBJECT: Memorandum of Law in Support of Request
for Confidential Treatment of Portions of Annexes to
Emergency Response Plan

**MEMORANDUM OF LAW IN SUPPORT OF REQUEST TO SUBMIT PORTIONS OF
ANNEXES A, B AND C TO LUMA'S EMERGENCY RESPONSE PLAN 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 June 3rd, 2021, LUMA filed before the honorable Puerto Rico Energy Bureau ("Bureau") a "Motion Submitting Annexes A, B and C to LUMA's Emergency Response Plan" (the "May 3rd Motion") which included Annex A (Major Outage Restoration), Annex B (Fire Response) and Annex C (Earthquake Response) (Annexes A, B and C, jointly, the "Annexes") to LUMA's Emergency Response Plan ("ERP").

In order to protect the personal identifying information of LUMA personnel, the signature and name of the LUMA officer that is identified in each of the Annexes (page 5 of Annex A, Annex B and Annex C), were submitted confidentially to the Bureau. Additionally, LUMA submitted for the record using the Bureau's electronic filing system, public redacted versions of the Annexes. "Non-Redacted" or

“confidential” versions of the Annexes were submitted both through the Bureau’s electronic filing and via e-mail message to the Bureau’s clerks’ office.

Paragraph 3 of the June 3rd Motion includes supporting legal analysis for the confidential submission of portions of the Annexes which is restated here 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”).

In compliance with the Bureau’s Policy on Confidential Information, LUMA submits this supporting Memorandum of Law that further identifies the confidential portions of the Annexes 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 Annexes 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.

III. Request for Confidentiality

LUMA hereby requests that the signature and name of a LUMA officer contained in the Annexes be kept confidential in accordance with Section 6.15 of Act 57-2014 (providing, 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 as such . . . ”, 22 LPRA §1054(n)), and pursuant to the Bureau’s Policy on Confidential Information. *See* CEPR-MI-2016-0009, Section A, as amended by the Resolution of September 16, 2016, CEPR-MI-2016-0009. It is respectfully submitted that protecting the signature and name of the LUMA officer in a context that reveals details of his/her employment and duties, is in the public interest and aligned with Puerto Rico’s legal framework on privacy which protect the personal identifying information included in personnel files. *See e.g.*, Const. ELA, Art. II, Sections 8 and 10 which protect the right to control personal information and distinctive traits which applies *ex proprio vigore* and against private parties. *see also e.g. Vigoreaux v. Quiznos*, 173 DPR 254, 262 (2008). *See also* Act 122-2019, Article 4 (vi) (providing, as exceptions to the rule on public disclosure, information whose disclosure could invade the privacy of third parties or affect their fundamental rights; Article 3(c) Act 122-2019 (stating that personnel files and similar information does not constitute public information subject to disclosure).

Because the full substantive contents of the ERP have been filed publicly, it is respectfully submitted that redaction of the name and signature at page 5 of each of the Annexes is proper and does not affect the public’s ability to review the ERP nor interferes with processes before this Bureau in connection with the ERP.

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 portions of the Annexes, 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
Annex A	PDF	Portions redacted in Page 5 of Annex A which is page 5 of the pdf filing	June 3, 2021	LUMA personnel personally identifiable information Protected under the Puerto Rico Constitution Const. ELA, Art. II, Sections 8 and 10	Section III of this Memorandum provides the legal basis to establish that the specified sections of Annex A includes confidential information.
Annex B	PDF	Portions redacted in Page 5 of Annex B which is page 169 of the pdf filing	June 3, 2021	LUMA personnel personally identifiable information Protected under the Puerto Rico Constitution Const. ELA, Art. II, Sections 8 and 10	Section III of this Memorandum provides the legal basis to establish that the specified sections of Annex B includes confidential information.
Annex C	PDF	Portions redacted in Page 5 of Annex C which is page 192 of the pdf filing	June 3, 2021	LUMA personnel personally identifiable information Protected under the Puerto Rico Constitution Const. ELA, Art. II, Sections 8 and 10	Section III of this Memorandum provides the legal basis to establish that the specified sections of Annex C includes confidential information.

WHEREFORE, LUMA respectfully requests that the Bureau **grant** LUMA’s request to keep confidential portions of the aforementioned portions of the Annexes that were filed with the June 3rd Motion and **accept** the submission for the public record of a redacted version of the Confidential Responses.

RESPECTFULLY SUBMITTED.

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