

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

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IN RE: REVIEW OF LUMA’S SYSTEM  
REMEDICATION PLAN

**CASE NO. NEPR-MI-2020-0019**

**SUBJECT:** Memorandum of Law in Support of Request for Confidential Treatment of Portions of Motion in Compliance with Order Submitting Additional Information Requested in Technical Conference, Supplemental Responses to Question and Clarifications.

**MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL  
TREATMENT OF PORTIONS OF LUMA’S MOTION SUBMITTING ADDITIONAL  
INFORMATION REQUESTED IN TECHNICAL CONFERENCE, SUPPLEMENTAL  
RESPONSES TO QUESTIONS AND CLARIFICATIONS**

**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 23, 2021, this 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 14th and 17th, 2021 (“April 23rd Order”). The April 23<sup>rd</sup> Order also directed that LUMA would have until May 19, 2021, to file additional information that the Bureau could require during the technical conference.

The technical conference was held on May 14th and 17th, 2021. Throughout the two 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 clarifications 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 19, 2021.

In compliance with the April 23rd Order and with the bench orders issued during the Technical Conference, on May 19, 2021, LUMA submitted the additional information requested by the Bureau and Bureau consultants, as well as additional responses and/or clarifications, as the Bureau authorized during the Technical Conference (“May 19<sup>th</sup> Submission of Additional Information”).

The May 19<sup>th</sup> Submission of Additional Information included one partially confidential response, TC-RFI-LUMA-MI-21-0019-210514-PREB-002, seven confidential attachments to said response, TC-RFI-LUMA-MI-21-0019-210514-PREB-002, attachments 1 through 7, and one confidential attachment to TC-RFI-LUMA-MI-21-0019-210514-PREB-004, attachment 1 (together, “the May 19<sup>th</sup> Confidential Responses”). LUMA used the Bureau’s electronic filing system to file 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 May 19<sup>th</sup> Confidential Responses was also submitted.

At page 2 of the May 19<sup>th</sup> Submission of Additional Information, 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”).

In compliance with the Bureau's Policy on Confidential Information, LUMA hereby submits this supporting Memorandum of Law that further identifies the confidential portions of the May 19<sup>th</sup> Submission of Additional Information and the May 19<sup>th</sup> Confidential Responses and states the legal basis for the requested confidential treatment. As will be explained in this Memorandum, the May 19<sup>th</sup> Confidential Responses include sensitive commercial information and trade secrets protected under Act 80-2011 and identifiable information of PREPA and LUMA employees that should be managed confidentially.

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 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 as such . . . ." 22 LPRC §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).

Relatedly, in connection with the duties of electric power service companies, Section 1.10 (i) of Act 17-2019 provides that electric power service company shall provide information requested by customers, except for confidential information in accordance with the Rules of Evidence of Puerto Rico.”

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:

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.

*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. Sensitive Commercial Information**

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.<sup>1</sup> 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* 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; (2) trade secrets protected by a contract, statute or judicial decision (3) private information of third parties. *See* Act 122-2019, Articles 4 (ix) and (x) and (xi).

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).

As identified in the table at Section IV *infra*, portion of the May 19<sup>th</sup> Confidential Responses include sensitive commercial information in the form of documents regarding commercial acquisitions processes and LUMA's commercial relationship with vendors, executed during the Front-End Transition Period (FET-Period), that LUMA has not disclosed to the public

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<sup>1</sup> 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 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.*

or to third parties outside the applicable commercial relationship. The information has commercial value as it includes details on how LUMA structured a private commercial process to acquire goods and services, details on the procedure conducted and templates of contracts that, to date, are not common knowledge nor readily accessible to third parties.

In the text of Response 2, TC-RFI-LUMA-MI-21-0019-210514-PREB-002, LUMA filed for the public record, explanations on the procurement process conducted for bill print & delivery services, including the dates when the different stages of the processes were conducted. It is respectfully submitted that the supporting documents that were filed with the Bureau as attachments 1 through 7, are commercially-sensitive documents that LUMA has kept and maintained confidentially as part of its business dealings and relationships with vendors during the FET Period. These are: (1) the instructions to proponents that were designed by LUMA and issued confidentially, including a detail of the proposal requirements, evaluation criteria, and terms and conditions, *Id.* attachment 1; (2) the description of the services with the estimated value of the services;, *id.* attachment 2; (3) LUMA's original form -- in excel format-- for submission of proposals that includes the specifications of the services and products to be provided, *id.* attachment 3; (4) the full text of LUMA's business analysis on the needs to be supplied by third party vendors which is an internal LUMA business documents showing LUMA's assessments, business strategy and adjudication, including confidential pricing comparisons *id.* attachment 4; and (5) templates of the master service agreement, *id.* attachment 5, and the service addendums, *id.* attachments 6 and 7.

LUMA appreciates the importance of placing the Energy Bureau in the position of ascertaining that, upon Service Commencement, LUMA will be ready to continue printing and issuing bills to customers and that said costs are reasonable, covered by the proposed Initial

Budgets and shall not lead to an increase in rates. That is why the documentation on the RFP process to select a vendor for bill printing and delivery were filed with the Energy Bureau. As a limited liability company authorized to conduct business in Puerto Rico, LUMA is called upon to protect documents such as the ones filed in connection with TC-RFI-LUMA-MI-21-0019-210514-PREB-002, that reveal its internal commercial and business dealings with vendors and that contain confidential information and trade secrets of third party vendors. To avoid future competitive harms and increased rate for LUMA customers that could ensue if LUMA's templates on internal processes for acquisitions, contracts, and assessments on business needs are disclosed, LUMA respectfully requests that TC-RFI-LUMA-MI-21-0019-210514-PREB-002 and attachments 1 through 7 to the same, be maintained confidentially.

The procedure to contract a vendor for bill printing needs was conducted pursuant to agreed-upon rules of confidentiality found in Section 7.4 of attachment 1, TC-RFI-LUMA-MI-21-0019-210514-PREB-002. LUMA and all of the potential vendors engaged in a confidential process which documents have not been disclosed to protect the process itself, LUMA's commercially-sensitive information, commercially-sensitive information and trade secrets of third parties, and the public interest behind protecting commercially-sensitive information. Disclosure of the documents filed as attachments 1 through 7 to TC-RFI-LUMA-MI-21-0019-210514-PREB-002, will expose LUMA to the threat of breaching confidentiality provisions stated in Section 7.4 of attachment 1, TC-RFI-LUMA-MI-21-0019-210514-PREB-002. Additionally, disclosure of the documents, including attachments 4 through 7 to TC-RFI-LUMA-MI-21-0019-210514-PREB-002, will expose LUMA to revealing protected materials that involve third parties.

The documents submitted to this Bureau as attachments 1 through 7, TC-RFI-LUMA-MI-21-0019-210514-PREB-002, are: (1) documents with commercial and financial value, and (2)



involve data that **is not common knowledge or readily accessible** by third parties who may seek to profit from or gain commercial advantages. Reasonable measures have been taken to protect the documents, including agreed-upon confidentiality provisions that bind LUMA, proponents and the selected vendor. Thus, it is information protected by Act 80-2011. Importantly, Act 80-2011 has been interpreted broadly by the Puerto Rico Supreme Court to protect information belonging to a business such as LUMA, that are kept privately to protect the orderly conduct of business and to avoid competitive harms. *See Ponce Adv. Med. v. Santiago Gonzalez*, 197 DPR 891.

It should be noted that attachment 3 to TC-RFI-LUMA-MI-21-0019-210514-PREB-002, is an excel sheet that not only shows information on LUMA's assessment of bill printing needs, but is also an original business document developed using LUMA's business expertise. If disclosed, it will give future vendors for LUMA an insight into LUMA's commercial processes and will affect LUMA's ability to procure goods and services in a competitive an open manner. It is the type of business document showing processes, methods and mechanisms, that is protected under Act 80-201.

Similarly, attachment 4 to TC-RFI-LUMA-MI-21-0019-210514-PREB-002, includes LUMA's internal analysis to select a vendor. It includes detailed assessments on how LUMA scored the proposals, pricing, and other commercially-sensitive data that have not been disclosed and would harm LUMA in its commercial dealings with vendors. Attachment 4 reveals LUMA's original and private business analysis, processes and conduct of business, that have not been publicly disclosed and whose disclosure would expose LUMA to having potential third-party vendors gain insights on LUMA's commercial processes.

Attachments 5 through 7 to TC-RFI-LUMA-MI-21-0019-210514-PREB-002, include the templates of LUMA's commercial agreements with its selected vendor. The main service agreement includes confidentiality clauses pursuant to which LUMA cannot disclose the substance of the agreements. *See* attachment 5, Article 5, including Article 5.2(b). These documents include details of the commercial dealings between LUMA and a vendor, including the breakdown of fees charged by the third-party vendor, *attachment 6* Exhibit A. This is commercially sensitive information of LUMA and of the third-party vendor. Such breakdowns have been kept confidentially. They were submitted to the Energy Bureau in compliance with an order, but disclosure to the public will expose LUMA to imperil the vendor's commercial rights and trade secrets which LUMA is called upon to protect.

Attachment 7 to TC-RFI-LUMA-MI-21-0019-210514-PREB-002, which is a service addendum, reveals trade secrets and commercially sensitive information of the chosen vendor because it provides details on how the bill printing services will be provided. The service addendum is sufficiently detailed to reveal commercial processes by the vendor. It is commercial information from a third party whose disclosure will harm its competitive interests. The vendor's competitors may gain insights on the commercial services that the vendor offers in bill printing market in Puerto Rico. It constitutes trade secrets and commercially-sensitive information protected from disclosure contractually and by law. *See* Act 80-2011; Act 122-2019, Article 5, (ix) and (x) (protecting from disclosure commercial information designated confidential by a contract and commercial information whose disclosure would cause substantial competitive harm to the person from whom the information was obtained).

Finally, attachment 1 to Response Number 4, which is an excel document, also includes sensitive commercial information and trade secrets in the form of a draft document that LUMA

prepared in the early stages of the prioritization process and that does not represent complete or final allocation of SRP / Non-SRP prioritization which, as LUMA has explained in this proceeding and in the technical conference, was formally done at the program level. Attachment 1 to response 4, contains LUMA's original work product with analysis and assumptions on LUMA's prioritization and sequencing for SRP programs. *See* TC-RFI-LUMA-MI-21-0019-210514-PREB-004, attachment 1. This is an original document that has not been disclosed to the third parties and whose disclosure would reveal sensitive and private commercial processes employed by LUMA in designing the SRP. It would be detrimental to LUMA's commercial interests protected under law, to have this original work-product become part of the public domain.

TC-RFI-LUMA-MI-21-0019-210514-PREB-004, attachment 1, was submitted to this honorable Energy Bureau as an aid in considering the SRP filing and to provide the Energy Bureau additional information on the SRP Program Prioritization and Sequencing Process. On balance, the confidentiality of this original working paper and assessment should be protected as it includes information on LUMA's internal processes and commercial methods. Throughout this proceeding, the Bureau designated as confidential information, data and documents that LUMA has filed on the SRP Prioritization tool. *See* Resolution and Order of May 6, 2021, table 2 at page 8, designating LUMA's prioritization tool as confidential information, RFI-LUMA-MI-20-0019-21046-PREB-0003 attachment 1. It is respectfully submitted that the same justification for confidentiality that applies to RFI-LUMA-MI-20-0019-21046-PREB-0003 attachment 1, applies to attachment 1 to TC-RFI-LUMA-MI-21-0019-210514-PREB-004.

## **B. Personal Identifying Information**

To protect personal identifying information of PREPA and LUMA personnel who worked on the bill printing RFP process, LUMA's response number 2, TC-RFI-LUMA-MI-21-0019-210514-PREB-002 and page 3 of attachment 1 to TC-RFI-LUMA-MI-21-0019-210514-PREB-002, were filed protecting employee names from disclosure. It is in the public interest to protect their names from disclosure as their names would be disclosed in connection with additional personal identifying information on their respective employments and their involvement in commercial dealings that they conducted confidentially. It is respectfully submitted that protecting the identities of PREPA and LUMA employees in a context that reveals their places of employments and duties, is in the public interest and aligned with Puerto Rico's legal framework on privacy which protect from disclosure the personal identifying information included in personnel files, *see e.g.*, Const. ELA, Art. II, Sections 8 and 10 which protect individuals against attacks to private life and include 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); *Bonilla Medina*, 140 DPR at 310-11, *Torres Albertorio*, 115 DPR at 133-34; Act 122-2019, Article 4 (vi) and (xi) (which provides, as exceptions to the rule on public disclosure: (i) information whose disclosure could invade the privacy of third parties or affect their fundamental rights, (ii) confidential information belonging to third parties; and (iii) and (iii) financial and banking information); Article 3(c) Act 122-2019 (stating that personnel files and similar information does not constitute public information subject to disclosure); Act 122-2019, Article 4 (vi) (stating that information that may affect the privacy rights of third parties or affect their fundamental rights is protected from public disclosure).

**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 May 19<sup>th</sup> Confidential Responses:

#	Response	Subject	Date of Submission	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable
2	TC-RFI-LUMA-MI-21-0019-210514-PREB-002 (text of response)	Bill Print & Delivery Request for Proposal (RFP)	May 19, 2021	Portions of response that have been redacted	Sensitive Commercial Information and Trade Secrets under Act 80-2011.  And personal identifying information of PREPA employees.
2.1	TC-RFI-LUMA-MI-21-0019-210514-PREB-002 Attachment 1	RFP Instructions	May 19, 2021	Portions of document that has been redacted	Sensitive Commercial Information and Trade Secrets under Act 80-2011.  And personal identifying information of LUMA employee.
2.2	TC-RFI-LUMA-MI-21-0019-210514-PREB-002 Attachment 2	RFP Description of Services	May 19, 2021	Portions of document that has been redacted	Sensitive Commercial Information and Trade Secrets under Act 80-2011.

#	Response	Subject	Date of Submission	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable
2.3	TC-RFI-LUMA-MI-21-0019-210514-PREB-002 Attachment 3 excel	RFP Detailed Requirements	May 19, 2021	Portions of document that has been redacted	Sensitive Commercial Information and Trade Secrets under Act 80-2011.
2.4	TC-RFI-LUMA-MI-21-0019-210514-PREB-002 Attachment 4	RFP Business Case	May 19, 2021	Portions of document that has been redacted	Sensitive Commercial Information and Trade Secrets under Act 80-2011.
2.5	TC-RFI-LUMA-MI-21-0019-210514-PREB-002 Attachment 5	Vendor Master Service Agreement	May 19, 2021	Portions of document that has been redacted	Sensitive Commercial Information and Trade Secrets under Act 80-2011.
2.6	TC-RFI-LUMA-MI-21-0019-210514-PREB-002 Attachment 6	Vendor Service Addendum	May 19, 2021	Portions of document that has been redacted	Sensitive Commercial Information and Trade Secrets under Act 80-2011.
2.7	TC-RFI-LUMA-MI-21-0019-210514-PREB-002 Attachment 7	Vendor Model Printing Rendering Service Addendum	May 19, 2021	Portions of document that has been redacted	Sensitive Commercial Information and Trade Secrets under Act 80-2011.
4.1	TC-RFI-LUMA-MI-21-0019-210514-PREB-004 Attachment 1 (Excel)	SRP and Non-SRP Programs Screening	May 19, 2021	Portions of the document that have been redacted	Sensitive Commercial Information and Trade Secrets under Act 80-2011.

**WHEREFORE**, LUMA respectfully requests that the Energy Bureau **grant** this request to keep confidentially portions of the aforementioned documents that were filed on May 19, 2021.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 1<sup>st</sup> 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](mailto:jmarrero@diazvaz.law); and Katiuska Bolaños-Lugo, [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law).



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