

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

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**IN RE:**

IN RE: INTERRUPCIÓN DE SERVICIO  
ELÉCTRICO DE 10 DE JUNIO DE 2021

**CASE NO. NEPR-IN-2021-0002**

**SUBJECT: Memorandum of Law in Support of  
Request for Confidential Treatment.**

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT  
OF MONACILLOS INCIDENT REPORT AND EXHIBITS TO SAME**

**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**

As requested by this honorable Puerto Rico Energy Bureau (“Energy Bureau”), on July 30, 2021, LUMA submitted, under seal of confidentiality, a report entitled “Analysis for Monacillos Fault Event. On 6/10/21” (“Monacillos Report”). LUMA also submitted via email a confidential SCADA Report that details the sequence of events. Finally, on August 3, 2021, LUMA submitted in persona a USB drive with a video of the June 10<sup>th</sup> Incident.

LUMA submits this supporting Memorandum of Law that states the legal basis for the request to treat the aforementioned filing and exhibits, confidentially. As will be explained in this Memorandum, the Monacillos Report, the SCADA Report and the video of the June 10<sup>th</sup> Incident should be protected from public disclosure as Critical Energy Infrastructure Information (“CEII”) as defined in federal regulations, 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674, and per the Energy

Bureau's Policy on Management of Confidential Information. *See* Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009 ("Policy on Management of Confidential Information"), issued on August 31, 2016, as amended by the Resolution dated September 16, 2016.

## **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 LPRR §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 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).

Regarding ongoing investigations, Section 15.10 of Regulation Number 8543, provides that:

The Commission's record shall remain confidential while the investigation is in process.

The record shall be available to the general public once the investigation report is notified to the investigated party or upon conclusion of any investigation that does not require the Commission to prepare a report, as set forth in Section 15.07 of this Chapter. However, any information classified as privileged during the course of the investigation, or any

information that may violate the fundamental rights of third parties or the right to privacy of the person investigated, shall be duly protected.,

### **III. Request for Confidentiality**

The Monacillos Report, the SCADA Report and the video of the June 10<sup>th</sup> incident include CEII that, under relevant federal law and regulations, is protected from public disclosure and garners confidential treatment to protect critical infrastructure from threats that could undermine the system and have negative repercussions in electric power services to the detriment of the interests of the public, customers, and citizens of Puerto Rico. In several proceedings, this Energy Bureau has considered and/or granted requests by PREPA to submit CEII under seal of confidentiality.<sup>1</sup> In at least two proceedings on Data Security,<sup>2</sup> and Physical Security,<sup>3</sup> this Bureau, *motu proprio*, has conducted proceedings confidentially, thereby recognizing the need to protect CEII from public disclosure. Additionally, this honorable Energy Bureau has granted requests by LUMA to protect CEII in connection with LUMA's System Operation Principles. *See* Resolution and Order of May 3, 2021, table 2 at page 4, Case No. NEPR-MI-2021-0001, granting protection to CEII included in LUMA's Responses to Requests for Information. Similarly, in the proceedings on LUMA's proposed Initial Budgets and System Remediation Plan, this honorable Energy Bureau granted confidential designation to several portions of LUMA's Initial Budgets and Responses to Requests for Information, recognizing that they included CEII, *see* Resolution and Order of April

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<sup>1</sup> *See e.g., In re Review of LUMA's System Operation Principles*, NEPR-MI-2021-0001 (Resolution and Order of May 3, 2021); *In re Review of the Puerto Rico Power Authority's System Remediation Plan*, NEPR-MI-2020-0019 (order of April 23, 2021); *In re Review of LUMA's Initial Budgets*, NEPR-MI-2021-0004 (order of April 21, 2021); *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).

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

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

22, 2021 on Initial Budgets, table 2 at pages 3-4 and Resolution and Order of April 22, 2021 on Responses to Requests for Information, table 2 at pages 8-10, Case No. NEPR-MI-2021-0004; Resolution and Order of April 23, 2021 on Confidential Designation of Portions of LUMA's System Remediation Plan, table 2 at page 5 and Resolution and Order of May 6, 2021 on Confidential Designation of Portions of LUMA's Responses to Requests for Information on System Remediation Plan, table 2 at pages 7-9, Case No. NEPR-MI-2020-0019.

As mentioned above, the Bureau's Policy on Confidential Information 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

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), part of the Homeland Security Act of 2002 protects critical infrastructure information (“CII”).<sup>4</sup> 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)<sup>5</sup>.

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<sup>4</sup> 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.

<sup>5</sup> CII includes the following types of information:

- (A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates

The Monacillos Report identifies forensic data and provides forensic analysis on critical infrastructure of the Monacillos substation as well as other components of the Transmission & Distribution System (“T&D System”). The Monacillos Report includes assessments on operation and restoration capabilities of critical infrastructures and identifies vulnerabilities that could be used by third parties to harm the T &D System. Also included in the Monacillos Report are several graphs and tables with renderings of critical infrastructures that identify components of the T&D System and their functioning and capabilities, *see* Figures 1-1, 2-1, 2-6, 2-8, 2-9, 2-10, 2-11 through 2-16, A1-1. The Monacillos Report also has pictures and still images of the video of the June 10<sup>th</sup> Incident that LUMA keeps and maintains confidential and have not been disclosed outside the confines of the investigation. *See* Monacillo Report, Figure 2-3, 2-4, 2-5, 2-7, A1-2 through A1-9.

Appendix II to the Monacillos Report, is Filed Report of the Circuit (1346-4) that provides details on the Circuit’s vulnerabilities and identifies its precise location.

Furthermore, the SCADA Report includes the sequence of events for June 10, 2021, and the sequential status of critical infrastructure on June 10, 2021. Finally, the video of the June 10<sup>th</sup> Incident portrays the functioning and faults that took place on June 10<sup>th</sup>. The video is submitted to assist the Energy Bureau in its pending investigation. It has not been publicly disclosed to protect the investigation and to avoid harms that could ensue if third parties have access to a live

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Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;  
(B)the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or  
(C)any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, construction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.



recording of an incident involving critical infrastructure that LUMA guards and protects from physical and cyber-attacks and intrusions.

It is respectfully submitted that the Monacillos Report, the SCADA Report and the video of the June 10<sup>th</sup> Incident should be designated as confidential CEII. This designation is a reasonable and necessary measure to protect critical infrastructure from attacks and to enable LUMA to leverage the information and assessment on critical infrastructures without external threats. The referenced report and materials provide detailed information that goes beyond identification of critical infrastructure to include identifying information of the assets and infrastructures and their vulnerabilities. Given the importance of ensuring the safe and efficient operation of the generation assets and the T& D System, LUMA respectfully submits that these materials constitute CEII that should be maintained confidentially to safeguard their integrity and protect them from external threats. If the reports, information and video fall in the hands of people who may want to harm the system, it will provide sufficient details to expose the system to risks and harms and would interfere with the orderly and safe functioning of several critical components of systems operations.

#### **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 for confidential treatment

	<b>Document or file</b>	<b>Pages in which Confidential Information is Found, if applicable</b>	<b>Summary of Legal Basis for Confidentiality Protection, if applicable</b>	<b>Date Filed</b>
1	Monacillos Report	Full text of the Report and Exhibits (48 pages).	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674.	July 30, 2021
2	SCADA Report	Full text of the Report	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674.	July 30, 2021
3	Video of June 10 <sup>th</sup> Incident	All contents of video.	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674.	August 3, 2021

**WHEREFORE**, LUMA respectfully requests that the Energy Bureau **grant** this request to keep confidential the Monacillo Report, the SCADA Report and the video of the June 10<sup>th</sup> Incident.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 9<sup>th</sup> day of August 2021.



**DLA Piper (Puerto Rico) LLC**  
 500 Calle de la Tanca, Suite 401  
 San Juan, PR 00901-1969  
 Tel. 787-945-9107  
 Fax 939-697-6147

/s/ Margarita Mercado Echegaray  
Margarita Mercado Echegaray  
RUA NÚM. 16,266