

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

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IN RE:

PUERTO RICO TEST FOR DEMAND
RESPONSE AND ENERGY EFFICIENCY

CASE NO.: NEPR-MI-2021-0009

**SUBJECT: Memorandum of Law in Support of Request
for Confidential Treatment of Documents submitted on
January 5, 2022**

**MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL
TREATMENT OF DOCUMENTS SUBMITTED BY LUMA ON JANUARY 5, 2022**

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC¹, and LUMA Energy ServCo, LLC² (jointly referred to as “LUMA”) and respectfully state, submit and request the following:

On January 5, 2021, LUMA submitted to this honorable Puerto Rico Energy Bureau (“Energy Bureau”) a *Motion Submitting LUMA’s Responses to Data Requests of Attachment A to December 14th Resolution and Order and Requesting Clarifications and Request for Confidential Treatment* (“January 5th Motion”). Among others, in the January 5th Motion, LUMA submitted, as Exhibit A, LUMA’s responses to the requests for information made by the Energy Bureau by Resolution and Order of December 14, 2021 to be used as inputs for an Avoided Cost Study conducted by the Energy Bureau to develop values that can be applied to Puerto Rico Test under development in this proceeding. As part of Exhibit A, LUMA submitted, under seal of confidentiality, the following seven Exhibits: Exhibit 1 – Refiled MCOS Workpapers; Exhibit 2- Raw Hourly Feeder Data; Exhibit 3 - Raw Hourly Substation Data; Exhibit 4 – LUMA District

¹ Register No. 439372.

² Register No. 439373.

Mapping; Exhibit 5- Hourly Generation for the Entire System; Exhibit 6- AES Fuel Price Forecast; and Exhibit 7- Historical Regulation Up/Down Actuals for 2020.

In the January 5th Motion, LUMA indicated that the Exhibits (1 to 7) contained raw data to be examined internally by Energy Bureau consultants for purposes of their research to prepare the Avoided Cost Study required in the referenced proceeding, and requested that, until such study was prepared, all raw data be kept confidentially. LUMA further explained that this approach would help protect the integrity of the research and data that may not be necessary or relevant for such study, thereby ensuring clarity of the record in this proceeding.

In addition, whether used or not for the Avoided Cost Study, LUMA also requested the Energy Bureau to receive and maintain **Exhibits 2, 3, 4 and 6** under seal of confidentiality, as Critical Energy Infrastructure Information (“CEII”), *see e.g.*, 6 U.S.C. §§ 671-674; 18 C.F.R. §388.113 (2020) and sensitive commercial information pursuant to the Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, and partially amended on September 16, 2016. LUMA hereby clarifies and supports its request in the January 5th Motion. LUMA hereby adds an additional ground to keep and maintain confidentially, **Exhibit 7** on the basis that it also contains sensitive commercial information. In this memorandum of law, LUMA also takes the opportunity to provide clarifications regarding the title provided to some of these Exhibits.

I. Applicable Laws and Regulation to Submit Information Confidentially Before this Energy Bureau.

The bedrock provision on management of confidential information 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 [now Energy Bureau] 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 §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 an electric power service company shall “provide documents and information as requested by customers, except for: ... confidential information in accordance with the Rules of Evidence of Puerto Rico.”

Per Act 57-2014, 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 Bureau’s Policy on Confidential Information also provides the following rules 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).

II. Request for Confidentiality

A. Raw Data

Exhibits 1 to 7 contain raw data to be examined internally by Energy Bureau consultants for purposes of their research and analysis to prepare an Avoided Cost Study in this proceeding. These Exhibits contain raw data.³ Disclosure of raw data runs counter to public interests, as third parties may mistakenly and without context interpret the information, thus misleading the public. Maintaining raw data confidentially until it is determined useful for the Avoided Cost Study also avoids unnecessary disclosure of data that may not be necessary or relevant for the Avoided Cost Study, thereby ensuring clarity of the record in this proceeding. This approach also helps protect the integrity of the research and study. Therefore, LUMA respectfully requests that all of the Exhibits to Exhibit A of the January 5th Motion- that is, **Exhibits 1-7** - be kept confidential and not be uploaded into the docket of this proceeding until such time the Energy Bureau consultants preparing the Avoided Costs Study determine what information in these Exhibits will be used as inputs for the Avoided Cost Study. Thereafter, LUMA respectfully requests that only those Exhibits or portions thereof that are not confidential per another basis for confidentiality be disclosed. By avoiding disclosure of raw data that may be irrelevant or misconstrued, the public interests are best served if this Energy Bureau maintains the confidentiality of these documents.

³ Exhibit 1 contains some data used by PREPA and its consultant Guidehouse in preparing an MCOS Study which was filed on May 10, 2021 in Case No. NEPR-AP-2018-0004, *In Re: The Unbundling of the Assets of the Puerto Rico Electric Power Authority*, the workpapers of which LUMA refiled on July 21, 2021 in that proceeding.

B. Critical Energy/Electric Infrastructure Information

LUMA respectfully submits that **Exhibits 2, 3 and 4** are protected from public disclosure and require confidential treatment to protect critical infrastructure from threats that could undermine the transmission and distribution system and have negative repercussions in electric power services to the detriment of the interests of the public, customers, and citizens of Puerto Rico.

As mentioned above, the Energy 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), a part of the Homeland Security Act of 2002, provides protection from disclosure of critical infrastructure information (“CII”).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

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)⁵.

Exhibit 2, titled Raw Hourly Feeder Data in the January 5th Motion, contains raw hourly feeder data from 2020 and shows the location of certain feeders and the feeder ampere single phase readings at the end of each feeder (distribution substation), as collected from the SCADA system. The information on the usage of these feeders coupled with their location is critical information because it reveals the criticality of the feeders by area- that is, how critical (based on usage) they are to the transmission and distribution system. Therefore, the relevant portions of this Exhibit warrant protection as they relate details about the transportation and transmission of electric power and provide assessments of critical infrastructures and critical electric infrastructures whose

(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.

⁵ 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 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.

disclosure would imperil the safe and reliable operations of the T&D System. Accordingly, portions of **Exhibit 2** have been redacted.

Exhibit 3, titled Raw Hourly Substation data in the January 5th Motion, contains 2018-2020 substation data, organized by Districts, from the MV-90 meters, provided in hourly intervals. This Exhibit identifies each substation by number within each District and also indicates the level of usage of the substations by hour. **Exhibit 4**, titled LUMA District Mapping in the January 5th Motion, contains information identifying substations to the corresponding Region and District and provides Substation Number, Name, Voltage, Region, District and Town. The identification and location of the substations coupled with the voltage and usage information in both Exhibits 3 and 4 is critical information because it reveals the criticality of the substations, that is, how critical (based on usage) they are to the transmission and distribution system. Therefore, the relevant portions of these Exhibits warrant protection as they relate details about the transportation and transmission of electric power and provide assessments of critical infrastructures and critical electric infrastructures whose disclosure would imperil the safe and reliable operations of the T&D System. Accordingly, portions of **Exhibits 3 and 4** have been redacted.

In sum, **Exhibits 2, 3 and 4** contain information about critical electric infrastructure the incapacity or destruction of which would negatively affect national security, economic security, public health or safety. The relevant information in these Exhibits is not common knowledge and is not made publicly available, and LUMA takes reasonable measures to protect it from public disclosure. It is respectfully submitted that, on balance, the public interest in protecting CEII and critical electrical infrastructures, weigh in favor of protecting the relevant portions of **Exhibits 2, 3 and 4** from disclosure given the nature and scope of the details included in those Exhibits. This

information should be protected and LUMA submits respectfully that it would be in the public interest to do so.

C. 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. 80-2011.⁶ 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. *See* Act 122-2019, Articles 4 (ix) and (x).

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).

⁶ 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.*

Exhibit 6, titled AES Fuel Price Forecast in the January 5th Motion, contains the AES fuel price forecast as of April 2021, which was compiled by Siemens for PREPA as a part of the fuel cost forecast provided to the FOMB. LUMA received this information confidentially from PREPA pursuant to Section 13.2 (a) of the T&D OMA⁷. Said Section 13.2 of the T&D OMA imposes duties on LUMA as the Operator to protect Owner Confidential Information.⁸ Owner Confidential Information includes certain system information furnished or made available by PREPA (as Owner) to LUMA on a confidential basis in connection with the T&D OMA. *Id.* In addition, this information merits to be treated as confidential because it is part of the competitive pricing of the independent power producers.. LUMA requests that this honorable Energy Bureau protect **Exhibit 6** from public disclosure as Confidential information that LUMA received from PREPA and as sensitive commercial information.

Exhibit 7, titled Historical Regulation Up/Down Actuals for 2020, contains the actual spinning and control reserve outputs for the year 2020, and shows the hourly amounts of control and spinning reserve requirements, and the difference from one hour to the next. Therefore, this Exhibit reveals the information on ancillary services provided by independent power producers, that is, services to regulate or stabilize voltage or frequency on the grid. Ancillary services may vary from generator to generator and these services are also compensated differently from energy

⁷ The T&D OMA refers to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement executed among PREPA, LUMA, and the Puerto Rico Public Private Partnerships Authority dated as of June 22, 2020.

⁸ Specifically, Section 13.2(a)(ii) of the OMA provides, in pertinent part, that subject to certain provisions, “each receiving Party shall, and shall cause its Representatives to, (A) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information of the disclosing Party, and (B) use all Confidential Information of the disclosing Party solely for the purposes of performing its obligations under the Transaction Documents and not for any other purpose [...]” The term “Confidential Information” includes “Owner Confidential Information.” See OMA, Section 13.2(a)(ii).

production. Disclosure of this information could provide competitive advantage for future bidding by third parties for generation and may ultimately affect the integrity of the bidding process and could have an impact on rate payers. This information is not common knowledge or publicly available and LUMA takes reasonable measures to protect it from public disclosure. LUMA requests that this honorable Energy Bureau protect **Exhibit 7**, in its entirety, from public disclosure as sensitive commercial information.

LUMA respectfully submits that Exhibits 6 and 7 should be protected as sensitive commercial information the disclosure of which could have an impact on the competitiveness of pricing associated with T&D operations which may also impact ratepayers; therefore, it is in the public interest to receive and maintain them under seal of confidentiality.

III. 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:

Document	Date of Submission	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable
Exhibits 1 through 7	January 5, 2022	All of the contents of each of the Exhibits.	Confidential Raw Data.
Exhibit 2- Motion Name: Raw Hourly Feeder Data	January 5, 2022	First and only tab of Excel table, row 1 and rows 3 through 8787; row 8788 starting at column BCB and ending in column BGH; and columns BCC to BGE, rows 8790 to 13134.	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674.
Exhibit 3- Raw Hourly Substation data	January 5, 2022	First tab of all 26 Excel tables, row 2 through 1048576; and Sheet 1 of the Barranquitas District Excel document, column A rows 1-1273, column C rows 1-319, column D row 1.	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674.

Document	Date of Submission	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable
Exhibit 4- LUMA District Mapping	January 5, 2022	First and only tab of Excel table, columns B, C and D.	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674.
Exhibit 6- AES Fuel Price Forecast	January 5, 2022	First and only tab of Excel table, rows 2, 3, and 6 through 12.	Sensitive Commercial Information and Trade Secrets under Act 80-2011.
Exhibit 7- Historical Regulation Up/Down Actuals for 2020	January 5, 2022	First and only tab of Excel table, rows 2 through 8784.	Sensitive Commercial Information and Trade Secrets under Act 80-2011.

IV. Clarification

LUMA hereby submits a clarification of the title and contents of **Exhibits 4** and **7**. **Exhibit 4** was titled LUMA District Mapping in the January 5th Motion. However, this document was saved under the name “Substation List Legend”. This Exhibit contains information identifying substations to the corresponding Region and District and provides Substation Number, Name, Voltage, Region, District and Town. The title “LUMA District Mapping” is an internal LUMA term used to refer to this information.

As for **Exhibit 7**, this Exhibit was titled “Historical Regulation Up/Down Actuals for 2020” in the January 5th Motion. However, this document was saved under the name “2020 Reserves & Generation by Hour”. The title provided to this Exhibit in the January 5th Motion mirrors the language used in the request for this information provided by the Energy Bureau. *See*

Appendix A to the December 14th Resolution, item 4(a), which requests “Historical regulation up/down requirements for the Puerto Rico electric system for any period of periods in 2020 or 2021 for which data are available.” As indicated in Exhibit A to the January 5th Motion, Exhibit 7 contains the actual spinning and control reserve outputs for the year 2020 and shows the hourly amounts of control and spinning reserve requirements, and the difference from one hour to the next. This information is generally interpreted as actual “regulation up down requirements”. In sum, these and all Exhibits included in the January 5th Motion contain the information indicated in Exhibit A to the January 5th Motion. This clarification regarding their titles is provided to prevent potential confusion regarding the nomenclature used to refer to these documents.

V. Conclusion

In sum, for the reasons stated above, **Exhibits 2, 3 and 4** of Exhibit A to the January 5th Motion contain CEII, and Exhibits 6 and 7 of Exhibit A to the January 5th Motion contain commercially sensitive information, all of which information is not common knowledge or readily accessible by third parties. Reasonable measures have been taken to protect the information included in these Exhibits. Confidentiality of the relevant portions of Exhibits **2, 3 and 4**, and the entirety of **Exhibits 6 and 7** to the January 5th Motion is in the public interest and that of ratepayers. Redacted versions of Exhibits 2, 3, 4, 6 and 7 are being submitted herewith to the Energy Bureau.

In addition, given that Exhibits 1 to 7 of Exhibit A of the January 5th Motion contain raw data, these should be maintained confidential and outside the docket of this proceeding until such time the Energy Bureau consultants preparing the Avoided Costs Study determine whether these or any part thereof will be used for such study, in order to avoid disclosure of information that may be irrelevant to this proceeding or that given its raw nature may be misconstrued.

WHEREFORE, LUMA respectfully requests the Energy Bureau to **take notice** of the aforementioned and grant LUMA's requests to (i) treat at all times the relevant portions of **Exhibits 2, 3 and 4** and, in their entirety, **Exhibits 6 and 7** of Exhibit A to the January 5th Motion **confidentially** as Critical Energy Infrastructure Information or sensitive commercial information; and (ii) in light of their nature as raw data, maintain **Exhibits 1 to 7** of Exhibit A of the January 5th Motion **confidential and outside the docket of this proceeding** until such time the Energy Bureau consultants preparing the Avoided Costs Study determine whether the information in these Exhibits or any part thereof will be used as input for such study, and subsequently only disclose the data so used and only if such data is not confidential for reason of its status as Critical Energy Infrastructure Information or sensitive commercial information as indicated herein.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 18th day of January 2022.

We certify that we filed this motion using the electronic filing system of the Puerto Rico Energy Bureau.



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
margarita.mercado@us.dlapiper.com

/s/ Laura T. Rozas
Laura T. Rozas

RUA Núm. 10,398
laura.rozas@us.dlapiper.com

Redacted versions of Exhibits 2, 3, 4, 6 and 7
Submitted via Email to the Energy Bureau