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

IN RE:	**CASE NO. NEPR-MI-2021-0002**
IN RE: REVIEW OF THE PUERTO RICO ELECTRIC POWER AUTHORITY'S 10 YEAR INFRASTRUCTURE PLAN-DECEMBER 2020	**SUBJECT: Motion to Substitute Exhibit 2 Submitted to the Energy Bureau on January 24, 2022, Request Confidentiality of Portions of Such Exhibit 2, and Submit Supporting Memorandum of Law**

MOTION TO SUBSTITUTE EXHIBIT 2 SUBMITTED TO THE ENERGY BUREAU ON JANUARY 24, 2022, REQUEST CONFIDENTIALITY OF PORTIONS OF SUCH EXHIBIT 2, AND SUBMIT SUPPORTING MEMORANDUM OF LAW

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC[1], and **LUMA Energy ServCo, LLC**[2], (jointly referred to as "LUMA"), through the undersigned legal counsel and respectfully submit the following:

On January 24, 2022, LUMA submitted to this Puerto Rico Energy Bureau ("Energy Bureau") three (3) Scopes of Work ("SOW") for transmission and distribution Projects for this Energy Bureau's review and approval prior to submittal to COR-3 and FEMA, pursuant to the Energy Bureau's Resolution and Order of March 26, 2021[3], as well as an updated list of transmission and distribution projects. *See* LUMA's *Motion Submitting Updated List of Transmission and Distribution Projects and Three Scopes of Work* filed on January 24, 2022 (the

[1] Register No. 439372.
[2] Register No. 439373.
[3] *See* the Energy Bureau's Resolution and Order issued on March 26, 2021 in the instant proceeding at pp. 18-19, wherein the Energy Bureau ordered, in pertinent part, that the Puerto Rico Electric Power Authority ("PREPA") submit to the Energy Bureau the specific projects to be funded with Federal Emergency Management Agency ("FEMA") funds or any other federal funds at least thirty (30) calendar days prior to submitting these projects to the Puerto Rico Central Office for Recovery, Reconstruction and Resiliency ("COR-3"), FEMA or any other federal agency.

"January 24 Motion"). Specifically, in the January 24 Motion, LUMA submitted, as Exhibit 2 **(**the "January 24 Exhibit 2"**)**, the following SOWs: Cybersecurity Program Implementation, dated January 5, 2022 (the "Cybersecurity SOW"); Field Area Network (FAN) IT/OT Telecom, dated December 10, 2021 ("IT/OT SOW"); and Isla Grande 1101, dated October 27, 2021.

By inadvertence, the January 24 Exhibit 2 was submitted for the record in this proceeding in unredacted form. LUMA respectfully requests this Energy Bureau to remove from the record the January 24 Exhibit 2. In its stead, LUMA is submitting an updated version of the January 24 Exhibit 2 **under seal of confidentiality**. *See* **Exhibit 1** (the "Updated January 24 Exhibit 2").[4] LUMA is also submitting herein a redacted version of the Updated January 24 Exhibit 2 to be uploaded in the record in substitution of the January 24 Exhibit 2. *See* Exhibit 2.

LUMA respectfully submits that portions of the Cybersecurity SOW and IT/OT SOW included in the Updated January 24 Exhibit 2 are confidential for the reasons indicated in memorandum of law included in this motion. Portions of the Cybersecurity SOW include confidential information in the form of critical energy infrastructure information or critical electric infrastructure information ("CEII") that garners protection from public disclosures pursuant to federal statutes and regulations, *see e.g.*, 6 U.S.C. §§ 671-674; 18 C.F.R. §388.113 (2020), and the Bureau's Policy on Management of Confidential Information, *see* the Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009 ("Policy on Management of

[4] The attached Updated January 24 Exhibit 2 contains two minor non-substantive changes: (i) in its tenth page the reviewers' names and signatures (which were missing in the previous version) were included and (ii) in the twenty-first page, the page number of the second item under "Contents (which appeared with an error code in the previous version) was included. These corrections are the reason for submitting this exhibit herein in updated form.

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Confidential Information"), issued on August 31, 2016. *See* Section I(C) below wherein these portions and basis for confidentiality are identified. The CEII pertains to safety systems and to vulnerabilities of critical system infrastructure that, if disclosed, would expose the electric power grid to attacks to the detriment of the public interest.

I. Memorandum of Law

A. 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: (i) confidential information in accordance with the Rules of Evidence of Puerto Rico; . . . and (ix) matters of public security involving threats against PREPA, its property or employees."

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).

B. Request for Confidentiality

LUMA respectfully submits that portions of the Cybersecurity SOW and the IT/OT SOW in the Updated January 24 Exhibit 2 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 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").[5]

[5] 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;

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)[6]

(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.

[6] 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

The Cybersecurity SOW, contained in the first to ninth pages of the Updated January 24 Exhibit 2 (pages 1 to 9 of the Cybersecurity SOW), includes information to be provided to FEMA to authorize funding for certain work related to the transmission and distribution system cybersecurity program and identifies areas to be covered in this program. Specifically, the table on the top of fourth page (page 4 of the Cybersecurity SOW) includes, in the third, fourth, and fifth rows of the second column, information on the region, damage number and damaged inventory/asset category pertaining to the transmission and distribution cybersecurity program work covered by this SOW. The first and second paragraphs of this fourth page describe areas that would be addressed in the proposed work on this cybersecurity program. The table on the top of fifth page (page 5 of the Cybersecurity SOW) contains a list of facilities, composed of seven rows, and below this table there is a description of the facilities covered by the scope of work. The block in the bottom half of this fifth page and the text in the two blocks of information in the sixth page (page 6 of the Cybersecurity SOW) contain the description of the scope of work and repairs needed, if any, and the estimated dates of completion of plans and specifications and cost estimates and implementation. The second and third rows in the block on the top of the seventh page (page 7 of the Cybersecurity SOW) contain a description of the type of project and the difference between the current and proposed cybersecurity program. The first row of the block on the top of the eighth page (page 8 of the Cybersecurity SOW) contains a list of the industry standards that would be

(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.

applied, which if disclosed could potentially provide a glimpse into the types of work included in the SOW. In addition, the third block on this same page contains a summary of the scope of work.

The IT/OT SOW, contained in the tenth to eighteenth pages of the Updated January 24 Exhibit 2 includes information to be provided to FEMA to obtain funding in connection with work related to a Field Area Network (FAN) to improve IT/OT connectivity between various components of the transmission and distribution system and identifies areas to be addressed by this program. Specifically, the table on the top of the thirteenth page (page 4 of the IT/OT SOW) includes, in the third, fourth, and fifth rows of the second column, information on the region, damage number and damaged inventory/asset category pertaining to the IT/OT assets covered by the SOW. The table on the bottom of the thirteenth contains two rows under the header of the first column listing facilities that would be affected by the proposed work and the number of a facility in the first row under the header of the second column. On the first half of the fourteenth page (page 5 of the IT/OT SOW), there is a description of current state of IT/OT capabilities and technologies and proposed improvements, as well as a list of the type of transmission and distribution system facilities that would be covered by the proposed scope of work. In the section titled "Project Scope" starting near the middle of the fourteenth page (page 5 of the IT/OT SOW) and continuing through to the top three fourths of fifteenth page (page 6 of the IT/OT SOW), there is a description of the scope of work, including the proposed areas to be analyzed, assessed or studied, technology objectives and options, concepts related to the development of a deployment strategy, certain request for proposal requirements containing details regarding the types of work to be covered, types of contracts required to conduct the work, pilot testing, and the estimated dates of completion of plans and specifications and cost estimates and implementation. In the section

titled “Type of Project” near the bottom of the fifteenth and continuing to the top of the sixteenth page (page 7 of the IT/OT SOW), there is a description of the type of project for FEMA purposes including the description of whether it is a restoration, improvement, or alternate project. Information on the latter is also included in the second row of the first block in this same page. In the first three paragraphs below the box on top of the sixteenth page, there is a description of the technology options to be considered, capabilities of the system to be implemented, and expected improvements. On the eighteenth page (page 9 of the IT/OT SOW), facilities affected by the work are identified by location including GPS coordinates and a map.

The described portions of the Cybersecurity SOW contained in the Updated January 24 Exhibit 2 identify and describe virtual assets of the transmission and distribution system and proposed areas for improvement, thereby providing information that could be used to identify potential vulnerabilities in these assets which, if misused, could have significant adverse effects on the transmission and distribution system operations. Similarly, the described portions of the Cybersecurity SOW identify and describe virtual assets of the transmission and distribution system and the physical assets to which these virtual assets provide or should provide connectivity and identifies areas for improvement in the functioning of these virtual assets. As such, these portions of the Updated January 24 Exhibit 2 contain information about critical electric infrastructure the incapacity or destruction of which would negatively affect national security, economic security, public health or safety. This information is not common knowledge and is not made publicly available, and LUMA takes reasonable measures to protect it from public disclosure. Therefore, it is respectfully submitted that, on balance, the public interest in protecting CEII, weigh in favor of protecting the relevant portions of Cybersecurity SOW and the IT/OT SOW in the Updated

January 24 Exhibit 2 from disclosure given the nature and scope of the details included in those portions of the Exhibit.

In sum, LUMA respectfully submits that the described portions of the Updated January 24 Exhibit 2, within the Cybersecurity SOW and IT/OT SOW, warrant protection from public disclosure. The redacted version of the Updated January 24 Exhibit 2, submitted herein as Exhibit 2, contains redactions of the confidential portions described above so that these are protected from public view**.**

C. 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**
Exhibit 1 (in substitution of Exhibit 2 submitted on January 24, 2022)	February 1, 2022 (in substitution of version submitted on January 24, 2022)	Fourth Page (Page 4 of Cybersecurity SOW): In the table on the top of the page, the text in the third, fourth and fifth rows of the second column (each with one line of text) The first and second paragraphs of the section titled "Introduction" (each with five (5) and eight (8) lines of text, respectively)	 Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674 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
		Fifth Page (Page 5 of Cybersecurity SOW):	
		In the table on the top of the page, the text in all seven the rows in the first column under the header "Name" (with nine (9) lines of text)	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674
		The sentence under the section titled "Facilities Description" (two (2) lines of text)	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674
		The text inside the block in the bottom of the page titled "Scope of Work Description (e.g., Plan for Repair)" (eighteen (18) lines of text)	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674.
		Sixth Page (Page 6 of the Cybersecurity SOW):	
		The text inside the first block, (six (6) lines)	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674
		The text inside the second block, under the title "Scope" (thirty-four (34) lines of text)	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
		Seventh Page (Page 7 of the Cybersecurity SOW):	
		In the block on top of the page titled "Type of Project", the text inside the second and third rows (one line of text in the second row and four (4) lines of text in the third row)	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674
		Eight Page (Page 8 of the Cybersecurity SOW):	
		In the block on the top of this page titled "Industry Standards", the text inside the first row (three (3) lines of text)	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674
		The text in the third block on this page, titled "406 Mitigation Opportunity Scope of Work" (eight (8) lines of text)	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674.
		Thirteenth Page (Page 4 of IT/OT SOW:	
		In the table on top of the page, the text in the third, fourth and fifth rows under the second column (each with one line of text)	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674
		In the table on the bottom of the page titled "Facilities List", the text in the first and second rows of the first column (under the heading "Name") (with eight (8) lines of text) and the	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
		text in first row of the second column (under the heading "Number") (with one line of text) Fourteenth Page (Page 5 of the IT/OT SOW): The text under the section titled "Facilities Description" (with twenty-six (26) lines of text) The text in paragraphs numbered 1 and 2 in the Section titled "Project Scope" Fifteenth Page (Page 6 of the IT/OT SOW): The text in the first bullet and items number 3, 4, and 5 (the first twenty lines from top to bottom of this page) The text in item 7 (two lines) The text in the first bullet in item number 8, and the (6) additional lines of text below it (a total seven (7) lines)	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674 Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674 Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674 Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674 Critical Energy Infrastructure Information 18

Document	Date of Submission	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable
			C.F.R. §388.113; 6 U.S.C. §§ 671-674
		The text in items number 1 and 2 under "Type of Project" (five lines)	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674
		Sixteenth Page (Page 7 of the IT/OT SOW):	
		The text in items b and 3 on the top of the page (two lines)	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674
		The text in the second row of the block near the top of the page (one line)	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674
		The text in the first three paragraphs below the block on the top of the page (fourteen (14) lines)	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674
		Eighteenth Page (Page 9 of the IT/OT SOW):	
		In the table under the section titled "Attachments", (i) under the heading of the first column: the text in the second line of the first row; and under the heading of the second column: the text (one line) and the figure/link in the first row and the text (one line) and figure in the third row following "Location Maps and Site Picture"	Critical Energy Infrastructure Information 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674

WHEREFORE, LUMA respectfully requests that the Energy Bureau (i) **take notice** of the aforementioned, (ii) **accept** the Updated January 24 Exhibit 2 submitted herein in Exhibit 1 **under seal of confidentiality**, (ii) **order** that the original January 24 Exhibit 2 be removed from the record and substituted by the redacted version of the Updated January 24 Exhibit 2 included as **Exhibit 2** herein; and (iii) **approve the request for confidential treatment** of the portions of the Cybersecurity SOW and IT/OT SOW that form part of the Updated January 24 Exhibit 2.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 1st day of February 2022.

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 Katiuska Bolaños-Lugo, kbolanos@diazvaz.law.

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Exhibit 1

Updated January 24 Exhibit 2

Exhibit 2

Redacted Updated January 24 Exhibit 2