

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

NEPR

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IN RE: REVIEW OF LUMA'S
INITIAL BUDGETS

CASE NO. NEPR-MI-2021-0004

**SUBJECT: Motion in Compliance with
Resolution and Order of March 25, 2022 and
Request for Confidential Treatment**

**MOTION IN COMPLIANCE WITH RESOLUTION AND ORDER OF MARCH
25, 2022 AND SUBMITTING SUPPORTING WORKPAPERS TO LUMA'S ANNUAL
BUDGETS AND REQUEST FOR CONFIDENTIAL TREATMENT**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC ("ManagementCo"), and **LUMA Energy ServCo, LLC** ("ServCo"), (jointly referred to as "LUMA"), and respectfully state and request the following:

I. Submission in Compliance with March 25th Order

In a Resolution and Order dated July 16, 2021, this Puerto Rico Energy Bureau ("Energy Bureau") determined that LUMA should file the Fiscal Year 2023 Proposed Budget on or before April 1, 2022 (the July 16th "Resolution and Order").

Subsequently, on March 25, 2022, this Energy Bureau issued a Resolution and Order on the Requirements of the Fiscal Year 2023 Budget filing requirements ("March 25th Order"). In essence, this Energy Bureau directed that in support of its filing on the Fiscal Year 2023 Budget, LUMA should submit the workpapers and materials used to develop the Fiscal Year 2023 Budget in accordance with the applicable provisions of Attachment A of a Resolution and Order issued by the Energy Bureau in this proceeding on April 5, 2021, RFI-LUMA-MI-2021-0004-20220325-PREB-001. This Energy Bureau also included a second requests that directed the following:

Because the Energy Bureau's April 5th Resolution preceded LUMA's Modification Request, in which LUMA requested approval of Initial Budgets it had modified to conform with FOMB's FY 2022 Budget Certification, LUMA should clearly delineate its proposed Fiscal Year 2023 budget correlation with the FOMB figures and provide adequate supporting material.

RFI-LUMA-MI-202I-0004-20220325-PREB-002.

On March 31, 2022, LUMA submitted a *Request for Extension of Time to Submit Work Papers Related to the Annual Budgets For Fiscal Years 2023 Through 2025*, whereby it requested until April 8, 2022 to submit the supporting workpapers in compliance with the March 25th Order. That motion for extension of time is pending adjudication by this Energy Bureau.

On April 1, 2022, LUMA submitted to this honorable Puerto Rico Energy Bureau (“Energy Bureau”), its Annual Budgets for fiscal years 2023 through 2025 (“Annual Budgets”).

In compliance with the March 25th Order, LUMA hereby submits as Exhibit A, a written response to the requests issued by this Energy Bureau as well as workpapers that are responsive to requests 1¹ and 9² included in Attachment A of the April 5th Order. LUMA also provides its response to the second request of the March 25th Order. *See* Exhibit A, RFI-LUMA-MI-202I-0004-20220325-PREB-002.

¹ Provide all supporting workpapers used to determine that Initial Budgets [now Annual Budgets] are consistent with PREPA’s current rate order, issued by the Energy Bureau through the January 10, 2017 Final Resolution and Order and the March 8, 2018 Final Resolution and Order in Case No.: CEPR-AP-2015-0001 (collectively, “2017 Final Rate Order”).

² Provide all supporting workpapers used to develop the [Annual] Budgets estimates, including re-organization and re-map budgets, budget templates, and [Annual] Budgets consolidation, showing the interdependencies with the System Remediation Plan and Performance Metrics proposals. Budget templates should be populated with estimated cost data, both pre- and post-consolidation to spending categories. These workpapers should include underlying Excel workbooks, with formulae intact, including workbooks and workpapers used to derive data presented in Schedules 5.1

In response to requests numbers 1 and 9 of Attachment A of the April 5th Order, LUMA is submitting the attachments that are identified in the table below. LUMA is also requesting confidential treatment for two of the working papers, as explained in Section II of this Motion.

Annual Budgets, Supporting Workpapers Identification of Confidential Information	Summary of Legal Basis for Confidentiality Protection	Summary of Reasons Why Each Claim Conforms to Legal Basis for Confidentiality
RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 1_Generation Allocation (excel file), Tab entitled “Comparison to Actuals”, columns 2-6 and column 7, lines 7 and 11 Tab entitled “Approved 2017 Rate Order”, lines 9-19	PREPA Confidential Information	Section 13.2 of the T&D OMA
RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 2_Operating Expenditures (excel file)	Sensitive Commercial Information and Trade Secrets under Act 80-2011	Section I of this Motion discusses and shows this attachment includes sensitive commercial information in the form of estimated expenditures, program resources requirements, and estimations and assumptions on costs, that LUMA has not shared with third parties and maintains confidentially.
RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 3_Capital Expenditures (excel file), Program Prioritization Tab	Sensitive Commercial Information and Trade Secrets under Act 80-2011	Section I of this Motion discusses and shows this attachment includes sensitive commercial information in the form of estimated expenditures, program resources requirements, and estimations and assumptions on costs, that LUMA has not shared with third parties and maintains confidentially.
RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 4_Bad Debts (excel file)	n/a	n/a

II. Request for Confidential Treatment and Supporting Memorandum of Law

In compliance with the Energy Bureau’s Policy on Management of Confidential Information,” CEPR-MI-2016-0009, issued on August 31, 2016, as amended on September 21, 2016 (“Energy Bureau’s Policy on Management of Confidential Information”), LUMA submits this request for confidential treatment applicable to three of the attachments submitted in response to the March 25th Order RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 1_Generation Allocation; RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 2_Operating Expenditures; and RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 3_Capital Expenditures).

A. Applicable Laws and Regulation to submit information confidentially before the Energy Bureau.

Section 6.15 of Act 57-2014 regulates the management of confidential information filed before this Bureau. It provides, in pertinent part, that: “[i]f any person who is required to submit information to the 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 Energy 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).

In connection with the duties of electric power service companies, Sections 1.10 (i) and (ix) of Act 17-2019 further provide that electric power service companies shall submit information 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.”

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 [Energy Bureau] who needs to know such information under nondisclosure agreements. However, the [Energy Bureau] shall direct that a non-confidential copy be furnished for public review”. *Id.* Section 6.15(c).

The Energy 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 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 Energy 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 Energy Bureau’s Policy on Confidential Information also 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, Energy 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 [Energy 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* Energy Bureau Regulation No. 9137 on *Performance Incentive Mechanisms*, Section 1.13 (addressing disclosure before the Energy Bureau of Confidential Information and directing compliance with Resolution CEPR-MI-2016-0009).

B. Request for Confidentiality

1. Sensitive Commercial Information

Under the Industrial and Trade Secret Protection Act of Puerto Rico, Act 80-2011, 10 LPRA §§ 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. (Emphasis added).

Trade secrets 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. As explained in the Statement of Motives of Act 80-2011, protected trade secrets include any information bearing commercial or industrial value that the owner reasonably protects from disclosure. *Id. See also* Article 4 of Puerto Rico’s Open Data Law, Act 122-2019 (exempting 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); *see also Next Step Medical Co. v. MCS Advantage Inc.*, 2016 WL 6520173, KLCE201601116 (P.R. Court of Appeals, September 13, 2016 at page 11 (holding that in Puerto Rico, what constitutes trade secrets is evaluated applying a broad definition). A trade secret includes ***any and all information*** from which a real or potential value or economic advantage may be derived; that is not common knowledge or accessible through other means; and as to which reasonable security measures have been adopted to keep the information confidential. *Ponce Adv. Medical*, 197 DPR at 906.

Two of the attachments to LUMA’s Responses to the March 25th Order, RFI-LUMA-MI-02I-0004-20220325-PREB-001 Attachment 2_Operating Expenditures and RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 3_Capital Expenditures, include sensitive commercial information on estimated expenditures, program resources requirements, and estimations and assumptions on costs, that LUMA has not shared with third parties and maintains confidentially.

The commercially sensitive and confidential information includes LUMA original supporting work papers and work product with estimations, methods and assumptions on allocations of costs for operational, and capital expenditures and improvement programs and information on expenditure categories by year. The attachments and information should be kept confidentially to secure the orderly conduct of future acquisitions and competitive procurement processes. Disclosure of the information will stifle future competitive processes and potentially increase costs since bidders and suppliers will have had the benefit of seeing LUMA's estimates, original analysis and work product on proposed budgets for the acquisition of these goods and services.³ Also, the attachments constitute LUMA's original work product which LUMA does not share with third parties to protect the orderly conduct of its business.

LUMA requests that two of the attachments to LUMA's Responses to the March 25th Order RFI-LUMA-MI-02I-0004-20220325-PREB-001 Attachment 2_Operating Expenditures and RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 3_Capital Expenditures, be maintained confidentially before this Energy Bureau as they contain sensitive commercial information whose premature disclosure would also contravene public policy on competitive procurement processes and will impede efficient allocation of PREPA funds that have been earmarked in the Annual Budgets to be invested in programs that will be funded over the next three years to deliver value to

³ As persuasive authority on the need to protect from early disclosure, information relevant to competitive procurement processes, LUMA requests that this honorable Energy Bureau consider Section 10.1 of the Joint Regulation 8815, *Joint Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet*, which provides for the confidentiality of information presented for procurement processes within PREPA, prior to awarding a contract, and that preserves the confidentiality of trade secrets, proprietary information or privileged and confidential information.

customers in accordance with policy and contractual requirements and within annual budget constraints.

It is important to note that in a Resolution and Order of April 21, 2021, with the subject *Request to Submit Portions of LUMA's Responses to Requests for Information Confidentially, and Memorandum of Law in Support Thereof* ("April 21st Order"), this Energy Bureau granted confidential treatment to two attachments filed in connection with LUMA's Initial Budgets that contain similar information to that found in in attachments to LUMA's Responses to the March 25th Order, RFI-LUMA-MI-02I-0004-20220325-PREB-001 Attachment 2_Operating Expenditures and RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 3_Capital Expenditures. See April 21st Order at page 10 (granting confidential treatment to RFI-LUMA- MI-21-0004- 210405-PREB- 009 Attachment 1 and RFI-LUMA- MI-21-0004- 210405-PREB- 009 Attachment 2). LUMA hereby requests that this Energy Bureau apply to RFI-LUMA-MI-02I-0004-20220325-PREB-001 Attachment 2_Operating Expenditures and RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 3_Capital Expenditures, the same ruling and designation of confidentiality that it issued on April 21, 2021 to the supporting workpapers filed with this motion, that contain sensitive commercial information regarding LUMA's estimating methods and assumptions.

2. PREPA Confidential Information

The table at Section I above, also identifies RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 1_Generation Allocation (excel file) as containing confidential information. RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 1_Generation Allocation (excel file) contains information regarding PREPA's Generation expenditures that LUMA received confidentially from PREPA pursuant to Section 13.2 (a) of the Puerto Rico Transmission and

Distribution System Operation and Maintenance Agreement (“T&D OMA”). Said Section 13.2 of the T&D OMA imposes duties on LUMA as the Operator to protect Owner Confidential Information. Owner Confidential Information includes certain system information furnished or made available on a confidential basis in connection with the T&D OMA. *Id.* As of the date of this filing, PREPA has not authorized LUMA to file the full contents RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 1_Generation Allocation publicly. Thus, LUMA requests that this honorable Energy Bureau protect from disclosure portions of RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 1_Generation Allocation (excel file) as Confidential information that LUMA received from PREPA. LUMA is filing today, a public redacted version of said attachments. The confidential portions are identified in the Table included in Section I of this Motion.

WHEREFORE, LUMA respectfully requests this Honorable Bureau **take notice** of the aforementioned, **deem** that LUMA complied with the March 25th Order, and **grant** this request for confidential treatment to four of the attachments submitted in support of the March 25th Order (RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 1_Generation Allocation; RFI-LUMA-MI-02I-0004-20220325-PREB-001 Attachment 2_Operating Expenditures and RFI-LUMA-MI-202I-0004-20220325-PREB-001 Attachment 3_Capital Expenditures).

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 8th day of April 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 Katuska Bolaños-Lugo, kbolanos@diazvaz.law.



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Exhibit A

FY-23-FY25 Annual Budgets Response to PREB Resolution and Order



FY23 – FY25 Annual Budgets LUMA Response to PREB Resolution and Order

NEPR-MI-2021-0004

Annual Budgets

Response to Resolution and Order

Response: RFI-LUMA-MI-2021-0004-20220325-PREB-001

REQUEST

The Energy Bureau REQUIRES LUMA to include in its filing, all applicable workpapers and supporting material used to develop its Fiscal Year 2023 budget proposal¹. In this respect, Attachment A of the Energy Bureau's April 5 Order [April 5 Resolution, Attachment A, pp 5-6] should be complied with, unless inapplicable due to specific references to the proposed Initial Budgets or changed circumstances. The Energy Bureau expects LUMA to make this determination being more rather than less inclusive.

RESPONSE

Per review of the Energy Bureau requests on April 5, 2021, LUMA is providing responses to applicable requests, which include RFI-LUMA-MI-2021-0004-20210405-PREB-001 and RFI-LUMA-MI-2021-0004-20210405-PREB-009, specifically as follows:

Generation Allocation

LUMA included an allocation for the Generation Budget for fiscal years 2023 through 2025 in LUMA's Annual Budgets. LUMA sought guidance from applicable sources to determine its proposed generation allocation, specifically LUMA based the allocation consistent with rate limits set in the PREB's Resolution and Order in Case CEPR-AP-2015-0001 dated March 8, 2017 (2017 Rate Order) and historical Generation actual spending under FOMB certified Fiscal Plans.

For the generation allocation supporting working papers please refer to RFI-LUMA-MI-2021-0004-20220325-PREB-001 Attachment 1_Generation Allocation (excel file).

Operating Expenditures

For the operating expenditures supporting working papers please refer to RFI-LUMA-MI-2021-0004-20220325-PREB-001 Attachment 2_Operating Expenditures.

Capital Expenditures

For the capital expenditures supporting working papers please refer to RFI-LUMA-MI-2021-0004-20220325-PREB-001 Attachment 3_Capital Expenditures.

Bad Debts

For the bad debts supporting working papers please refer to RFI-LUMA-MI-2021-0004-20220325-PREB-001 Attachment 4_Bad Debts.

¹ Refer to LUMA's request for extension submitted March 31, 2022, LUMA was unable to provide its response within the April 1, 2022 filing.

Annual Budgets

Response: RFI-LUMA-MI-2021-0004-20220325-PREB-002

REQUEST

Because the Energy Bureau's April 5th Resolution preceded LUMA's Modification Request, in which LUMA requested approval of Initial Budgets it had modified to conform with FOMB's FY 2022 Budget Certification, LUMA should clearly delineate its proposed Fiscal Year 2023 budget correlation with the FOMB figures and provide adequate supporting material.

RESPONSE

To clearly delineate correlation, and as stated within LUMA's fiscal years 2023-2025 Annual Budgets Section 2.2 Key Assumptions on page 24, LUMA has not provided Fuel, Purchased Power, Contribution in Lieu of Taxes (CILT) and Subsidies forecasts until they are reviewed by the FOMB. Annual Budgets continue to be subject to FOMB review and certification within the Fiscal Plan.