

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

NEPR

Received:

May 9, 2022

11:09 PM

IN RE:

IMPLEMENTATION OF THE PUERTO
RICO ELECTRIC POWER AUTHORITY
INTEGRATED RESOURCE PLAN AND
MODIFIED ACTION PLAN

CASE NO. NEPR-MI-2020-0012

**SUBJECT: Memorandum of Law in Support of
Request for Confidential Treatment of Responses
Submitted in Compliance with Resolution and
Order dated April 11, 2022**

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
RESPONSES SUBMITTED IN COMPLIANCE WITH RESOLUTION AND ORDER
DATED APRIL 11, 2022**

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy ServCo, LLC and LUMA Energy, LLC (collectively “LUMA”), through the undersigned legal counsel, and respectfully submit the following:

I. INTRODUCTION

On April 11, 2022, this honorable Puerto Rico Energy Bureau of the Public Service Regulatory Board (the “Energy Bureau”), issued a Resolution and Order (the “April 11th Order”) in connection with the Tranche 1 renewable energy and battery storage procurement (“Tranche 1 Procurement”) conducted by the Puerto Rico Electric Power Authority (“PREPA”). In the April 11th Order, the Energy Bureau ordered PREPA and LUMA to, on or before April 19, 2022, answer specified questions included in a list of questions set forth in the April 11th Order, numbered 1 through 7, relating to certain aspects of the Tranche 1 Procurement submittals from respondents and PREPA’s evaluation of those submittals¹. Specifically, from among the questions set forth in the April 11th Order, the Energy Bureau ordered PREPA to respond to those numbered 1 through

¹ These are subjects that, according to the April 11th Order, were discussed between the Energy Bureau and PREPA in a meeting they had on February 3, 2022, and with respect to which PREPA indicated its willingness to provide additional information. See April 11th Order at p. 1.

5, including subparts, and LUMA, as operator of the Transmission and Distribution System, to answer those numbered 6 and 7, including subparts (“Question 6” and “Question 7”, respectively). *See id.*

Question 6 was made in reference to “information received [by PREPA] from prospective battery storage respondents about technical details of minimum technical requirements (MTR) about the ancillary service capabilities and response times for certain energy battery resources” (*see id.* at p. 3), which information is included in an Informative Motion filed by PREPA with the Energy Bureau on February 10, 2022 (*see id.* at footnote 8)² (“February 10th Informative Motion”). Subpart (a) of Question 7, on its part, referred to certain LUMA concerns regarding interconnection agreements (*see id.* at p. 3) as expressed by PREPA in an Informative Motion filed by PREPA with the Energy Bureau on March 1, 2022 (*see id.* at footnote 9)³ (“March 1 Informative Motion”).

Both the February 10th and March 1 Informative Motions (collectively, the “Informative Motions”) were submitted by PREPA to the Energy Bureau under request for confidential treatment, which request is pending determination from the Energy Bureau. *See id.* at footnotes 8 and 6; and, with respect to the February 10th Informative Motion, the *Memorandum of Law in Support of Request for Confidential Treatment of Attachment A* filed by PREPA with the Energy Bureau on February 10, 2022 (“February 10th MOL”); and with respect to the March 1 Informative Motion, the *Memorandum of Law in Support for Request for Confidential Treatment of Attachment A* filed by PREPA with the Energy Bureau on March 1, 2022 (“March 1st MOL”).

² Footnote 8 makes reference to an Informative Motion Regarding Status of BESS Proposal Evaluations, VPP Proposal Negotiations and Interconnection Study Timeline, Including Exhibits A-I, A-II, and A-III, *In re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No. NEPR-MI-2020-0012, February 10, 2022.

³ Footnote 9 makes reference to an Informative Motion Regarding Status of Contract Negotiations and Delays in Finalizing Form of Interconnection Agreement, *In re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No. NEPR-MI-2020-0012, March 1, 2022. *See id.* at footnotes 9 and 6.

On April 19, 2022, LUMA submitted to this Energy Bureau a *Motion Submitting Partial Response and Requesting Brief Extension to Submit LUMA's Full Answers to Questions 6 and 7 in Energy Bureau's Resolution and Order of April 11, 2022* ("April 19th Motion") requesting this honorable Energy Bureau to provide LUMA an extension until April 29, 2022 to submit complete responses to Questions 6 and 7, given that LUMA had not been able to access the Informative Motions until April 18, 2022 when PREPA provided LUMA a copy. *See* April 19th Motion at p. 3. In addition, without waiving this request, LUMA provided partial responses to these questions, including a full response to subpart (b) of Question 7, which were included in Exhibit 1 to the April 19th Motion (the "April 19th Partial Response"). *See id.* LUMA also reserved the right to further expand upon or revise the April 19th Partial Response based on its review of the Informative Motions. *See id.* On the same date, PREPA filed a *Motion for Extension of Time until April 25, 2022, to Comply with Responses Required by the April 11, 2022 Resolution and Order* whereby it requested an extension, until April 25, 2022, to submit the information requested by the PREB through its questions.

On April 22, 2022, the Energy Bureau issued a Resolution and Order extending the deadline for LUMA and PREPA to submit their responses to their respective questions in the April 11th Order until April 28, 2022. Therefore, on April 28, 2022, LUMA filed a *Motion Submitting Complete Responses to Questions 6 and 7 in Energy Bureau's Resolution and Order of April 11, 2022, and Requesting Confidential Treatment* ("April 28th Motion"). LUMA's complete responses to the Energy Bureau's questions were included as Exhibit A to the mentioned motion (the "April 28th Exhibit"). As anticipated in the April 28th Motion, the responses in the April 28th Exhibit A were prepared based on LUMA's review of the PREPA Informative Motions, and parts of these responses referred, directly or indirectly, to some of the information contained in the Informative

Motions which, as mentioned, were submitted by PREPA to this Energy Bureau under request for confidential treatment. Accordingly, when PREPA provided copy of the Informative Motions to LUMA, it did so under condition that the information in the Informative Motions be maintained confidential by LUMA.

On the same date, PREPA submitted its responses to the Energy Bureau's questions ("PREPA's Responses") under seal and as Attachment A to a *Memorandum of Law in Support of Request for confidential Treatment of Attachment A* ("April 28th Memorandum"). As set forth by PREPA in its April 28th Memorandum, PREPA's Responses included information related to ongoing negotiations, strategies to prepare documents to be negotiated and proposals that are still being considered by the PREPA Tranche 1 RFP Evaluation Committee as part of the Tranche 1 RFP process.

Consistent with the above and for the reasons explained in detail below, LUMA requests the Energy Bureau to receive and maintain the April 28th Exhibit A under seal of confidentiality 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.

II. BACKGROUND

A. Applicable Laws and Regulation to a request for confidentiality before the PREB

Section 6.15 of Act 57-2014 regulates the management of confidential information filed before this Energy 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 [Energy Bureau] 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, Section 1.10 (i), (vii) and (viii) of Act 17-2019 further provide that electric power service companies shall “provide documents and information as requested by customers, except for: (i) confidential information in accordance with the Rules of Evidence of Puerto Rico; [...] (vii) trade secrets of third parties; [and] (viii) *issues that should be maintained confidential in accordance with any confidentiality agreement*, provided, that such agreement is not contrary to public interest;...”. (Emphasis added.)

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.

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 Energy Bureau. To wit, Section 1.15 provides that, “a person has the duty to disclose information to the [Energy 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 [Energy 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. Grounds for Confidentiality

Questions 6 and 7 by the PREB relate to the Tranche 1 procurement process which at this date is ongoing and the object of negotiations, strategies and proposals. Consistent with the foregoing, this honorable Bureau has maintained under seal the documents including confidential information regarding this RFP process. To that end, through Resolution and Order entered on February 2, 2022, this honorable Bureau established that such confidential treatment is required pursuant to Sections 4(g) and 10.2 of the *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, Regulation 8815 of October 11, 2016 (the “February 2nd Order”) and that only once the RFP is completed, shall it be made public. *See*, the February 2nd Order at footnote 28. This Bureau’s course of action is consistent with the interest of maintaining the purity of the procurement process. PREPA has also filed under seal the confidential information related to this procurement process. In light of the foregoing, LUMA asks that this honorable Bureau approve this request for confidential treatment of portions of its responses to Questions 6 and 7 as detailed in the next section of this memorandum.

Additionally, LUMA is required to maintain the Informative Motions confidential pursuant to the provisions of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement of June 20, 2020 (“T&D OMA”). In particular, the T&D OMA provides that “any and all written, recorded or oral System Information furnished or made available in connection with [the OMA], or that constitutes Work Product, shall be deemed “Owner Confidential Information” (*see* OMA at Section 13.2(a)(i)), and that LUMA shall “(A) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information of [PREPA], and (B) use all Confidential Information of [PREPA] solely for the purposes of performing its obligations under the [OMA and other specified agreements contemplated under the OMA]” (*see id.* at Section 13.2(a)(ii)). System Information includes any information relating to the T&D System. *See id.* at Section 1.1.

As anticipated, PREPA expressly requested that LUMA maintain the Informative Motions confidential. Further, upon filing its responses, PREPA submitted the information under seal of confidentiality and espoused its reasons for doing so through a Memorandum in Support of

Confidential Treatment. In light of the foregoing, LUMA is obligated by the T&D OMA to also request that the PREB keep confidential those portions of its responses that are based on the information contained in the Informative Motions and submits herein a public version of its Responses disclosing only those portions not based on the information provided by PREPA through the Informative Motions.

Those parts of the responses to Question 6 and Subpart A of Question 7 in the April 28th Exhibit A that were not already included in the April 19th Partial Responses were prepared based on, or making direct or indirect reference to, information in the confidential Informative Motions. Therefore, for the reasons stated above, LUMA is obligated to keep those parts of the answers to Question 6 and Subpart A of Question 7 of the April 28th Exhibit A confidential and is hereby restating its request to this honorable Energy Bureau to maintain these confidential. The redacted version of the April 28th Exhibit A is submitted herein as Exhibit 1.

C. Identification of Confidential Information

In compliance with the Energy Bureau's Policy on Management of Confidential Information, below please find a table summarizing the request for confidentiality:

Document or file	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
Response to the Energy Bureau's Questions on Renewable Procurement	<p>Page 1 Under "Part A" of "Response to Question 6": two lines of text under the heading "1. Rapid Spinning Reserve" and eight lines of text under the heading "Answer".</p> <p>Page 2 The first seven lines of text on the top of the page. One line of text under the heading "2. Roundtrip</p>	The information is confidential pursuant to Sections 1.1 and Section 13.2(a)(i)-(ii) of the T&D OMA.	April 28, 2022

Document or file	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
	<p>Efficiency” and six lines of text under the subsequent heading “Answer”.</p> <p>Two lines of text under the heading “3. Voltage Regulation” and seven lines of under the subsequent heading “Answer”.</p> <p>Five lines of text under the heading “4. Fast Dynamic VAR & SCR”.</p> <p>Page 3</p> <p>The first two lines of text at the top of the page.</p> <p>Five lines of text under the heading “Answer”.</p> <p>The text commencing with the second sentence under the heading “Part B” covering one word and seven lines of text.</p> <p>Page 4</p> <p>The last twelve lines of text in the page, under “Part A” of “Response to Question 7”.</p>		

WHEREFORE, LUMA respectfully requests the Energy Bureau to **take notice** of the aforementioned, and **approve the request for confidential treatment** of portions of the confidential responses to Questions 6 and 7 contained in **Exhibit A** of its *Motion in compliance with the Energy Bureau’s Resolutions and Orders of April 11, 2022 and April 22, 2022* filed on April 28, 2022, and **accept** the redacted version of such Exhibit A included in Exhibit 1 herein.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 9th day of May 2022.

We hereby certify that we filed this motion using the electronic filing system of this Puerto Rico Energy Bureau and that copy of this motion was notified to PREPA counsel mvazquez@diazvaz.law and kbolanos@diazvaz.law.



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/Ana Margarita Rodríguez Rivera
Ana Margarita Rodríguez Rivera
RUA Núm. 16195
ana.rodriguezrivera@us.dlapiper.com

Exhibit 1

Redacted Version of April 28th Exhibit A



LUMA Response to the Energy Bureau's Questions on Renewable Procurement

NEPR-MI-2020-0012

April 28, 2022

1. Response to Questions in Resolution and Order of April 11th, 2022

1.1 Question 6

QUESTION

PREPA received information from prospective battery energy storage respondents about technical details of minimum technical requirements (MTR) and about the ancillary service capabilities and response times for certain battery energy resources.¹

a. Provide LUMA's technical opinion on the requests made by certain proponents to change the threshold values associated with four MTRs for i) Response Time for Frequency Regulation, ii) Round Trip efficiency of battery storage, iii) Voltage regulation, and iv) Fast dynamic reactive power reserve and voltage support and short circuit ratio.

b. As operator of the T&D system including generation supply dispatch responsibilities, what is the appropriate threshold values required for these separate MTRs, considering the potential for procurement savings under certain relaxation considerations for threshold values for MTRs.

RESPONSE QUESTION 6

PART A:

1. Rapid Spinning Reserve:

[REDACTED]

Answer:

- [REDACTED]

¹ According to the Energy Bureau's Resolution and Order of April 11, 2022, this information from respondents was included in PREPA's Informative Motion Regarding Status of BESS Proposal Evaluations, VPP Proposal Negotiations and Interconnection Study Timeline, Including Exhibits A-I, A-II, and A-III, *In re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No. NEPR-MI-2020-0012, February 10, 2022.

- [REDACTED]
- [REDACTED]
- [REDACTED]

2. Roundtrip Efficiency

[REDACTED]

Answer:

- [REDACTED]
- [REDACTED]
- [REDACTED]

3. Voltage Regulation

[REDACTED]

Answer:

- [REDACTED]
- [REDACTED]
- [REDACTED]

4. Fast Dynamic VAR & SCR

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Answer:

[REDACTED]

Answer:

[REDACTED]

PART B

The MTRs as published by LUMA are appropriate for the current Puerto Rico Bulk Power System. [REDACTED]

[REDACTED]

1.2 Question 7

QUESTION

Concerning interconnection agreements.

- a. Provide specific rationale for LUMA's concerns that interconnection agreements on the Puerto Rico grid must meet the FERC large generator interconnection standard, rather than Puerto Rican specific standards that would provide sufficient reliability assurances.²
- b. Confirm or explain otherwise that any concerns with VPP respondent offerings do not include bulk system interconnection agreement concerns, since the resources would be connected at the distribution system level.

RESPONSE TO QUESTION 7

PART A

- a. LUMA's draft of the Large Generator Interconnection Agreement (LGIA) is based on the FERC standard but does include provisions to adapt it to Puerto Rico. This approach is consistent with LUMA's System Operating Principles and stated objectives of developing best in class practices for the Puerto Rico Bulk Power System and utilizing industry standards applied to the Puerto Rico context. Utilizing a FERC standard also provides consistency in application of transmission requirements and provides proponents with familiar contractual structures that are used throughout the United States. This also supports reduction of the perception of specific Puerto Rico risk.

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

² According to the Energy Bureau's Resolution and Order of April 11, 2022, these concerns were expressed by PREPA in PREPA's Informative Motion Regarding Status of Contract Negotiations and Delays in Finalizing Form of Interconnection Agreement, *In re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No. NEPR-MI-2020-0012, March 1, 2022.

PART B

- b. Confirmed. LUMA has been invited by PREPA to technical conferences with the two VPP proponents, and it is the LUMA team's understanding that the resources would be connected at the distribution level and thus not require a Large Generator Interconnection Agreement. If transmission level resources were considered, the interconnection agreement would apply.