

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

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**IN RE: REVIEW OF LUMA’S TERMS
OF SERVICE (LIABILITY WAIVER)**

CASE NO. NEPR-MI-2021-0007

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

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
EXHIBIT I SUBMITTED BY LUMA ON ITS JUNE 30, 2022, MOTION**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC (“ManagementCo”), and LUMA Energy ServCo, LLC (“ServCo”), (jointly “LUMA”), and respectfully state and request the following:

I. Introduction

On June 30, 2022, LUMA filed its *Motion In Compliance With Final Resolution and Order and Request For Confidential Treatment* submitting as an exhibit a redacted public version of Exhibit I consisting of an Excel Spreadsheet including all pending judicial and extrajudicial damages claims known to LUMA for events arising as a result of the operation of the T&D System during June 1, 2021, and May 31, 2022 (“Excel Spreadsheet”). LUMA made this filing in compliance with the Energy Bureau’s Final Resolution and Order issued on May 31, 2021. In its Motion, LUMA submitted a public version of the Excel Spreadsheet to protect the undisclosed names of the Claimants pursuing extrajudicial claims against LUMA.

LUMA submits this Memorandum of Law to support its request to keep the undisclosed names of the Claimants pursuing extrajudicial claims against LUMA confidential. This Memorandum of Law contains the legal basis for which LUMA is entitled to file the Excel

Spreadsheet under the seal of confidentiality. As explained below, the Energy Bureau should protect the Claimants' names in the Excel Spreadsheet from public disclosure as publication will violate the Claimants' right to privacy under the Constitution of Puerto Rico. Const. P.R., Art. II § 8; *see also* Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009 ("Policy on Management of Confidential Information"), issued on August 31, 2016, as amended by the Resolution dated September 16, 2016.

II. Applicable Laws and Regulation to Submit Information Confidentially Before the Bureau.

The bedrock provision on the management of confidential information filed before this Energy Bureau is Section 6.15 of Act 57-2014, known as the "Puerto Rico Energy Transformation and Relief Act." It provides, in pertinent part, that: "[i]f any person who is required to submit information to the Energy Commission believes that the information to be submitted has any confidentiality privilege, such person may request the Commission to treat such information as such" 22 LPRA § 1054n. If after appropriate evaluation the Energy Bureau determines 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.* § 1054n(a).

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.* § 1054n(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 nonconfidential copy be furnished for public review.” *Id.* § 1054n(c).

Relatedly, in connection with the duties of electric power service companies, Section 1.10 (i) of Act 17-2019 provides that electric power service companies shall provide the information requested by customers, except for confidential information under the Rules of Evidence of Puerto Rico.

Moreover, the Energy Bureau’s Policy on Confidential Information details the procedures a party should follow to request that a document or portion thereof be afforded confidential treatment. In essence, the referenced Policy requires identifying confidential information and filing 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 20, 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 why each claim or designation conforms to the applicable legal basis of confidentiality. *Id.* at ¶ 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.* at ¶ 6.

Further on, Energy Bureau Regulation No. 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings*, includes a provision for filing confidential information in proceedings before this 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.

Regulation No. 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings* § 1.15; *see also* Energy Bureau Regulation No. 9137 on *Performance Incentive Mechanisms* § 1.13 (addressing disclosure before the Energy Bureau of Confidential Information and directing compliance with Resolution CEPR-MI-2016-0009).

III. Request for Confidentiality

The Excel Spreadsheet filed on June 30, 2022, contains the undisclosed names of the Claimants pursuing extrajudicial claims against LUMA. The Excel Spreadsheet warrants confidential treatment to protect the names of LUMA’s customers. In several proceedings, this Energy Bureau has considered and granted requests by PREPA to submit CEII under seal of confidentiality.¹ For example, in at least two proceedings on Data Security,² and Physical Security,³ this Energy Bureau, *sua sponte*, conducted proceedings confidentially, recognizing the need to protect Critical Energy Infrastructure Information (“CEII”) from public disclosure. *See* 18 C.F.R. § 388.113.

¹ *See e.g., In re Review of LUMA’s System Operation Principles*, NEPR-MI-2021-0001 (Resolution and Order of May 3, 2021); *In re Review of the Puerto Rico Power Authority’s System Remediation Plan*, NEPR-MI-2020-0019 (order of April 23, 2021); *In re Review of LUMA’s Initial Budgets*, NEPR-MI-2021-0004 (order of April 21, 2021); *In re Implementation of Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, NEPR MI 2020-0012 (Resolution of January 7, 2021, granting partial confidential designation of information submitted by PREPA as CEII); *In re Optimization Proceeding of Minigrad Transmission and Distribution Investments*, NEPR-MI 2020-0016 (where PREPA filed documents under the seal of confidentiality invoking, among others, that a filing included confidential information and CEII); *In re Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, CEPR-AP-2018-0001 (Resolution and Order of July 3, 2019, granting confidential designation and PREPA’s request that included trade secrets and CEII); *but see* Resolution and Order of February 12, 2021 (reversing in part, grant of confidential designation).

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

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

Additionally, this Energy Bureau has granted requests by LUMA to protect CEII in connection with LUMA's System Operation Principles. *See* Resolution and Order of May 3, 2021, table 2 on page 4, Case No. NEPR-MI-2021-0001 (granting protection to CEII included in LUMA's Responses to Requests for Information). Similarly, this Energy Bureau granted confidential designation to several portions of LUMA's Initial Budgets and Responses to Requests for Information in the proceedings on LUMA's proposed Initial Budgets and System Remediation Plan.⁴

The Energy Bureau should also grant confidential status to the names of the Claimants in the Excel Spreadsheet. Section 8 of Article II of the Puerto Rico Constitution gives the citizens of Puerto Rico a right to privacy. Const. P.R., Art. II § 8. Specifically, Section 8 of Article II of the Puerto Rico Constitution states that “[e]very person has the right to the protection of law against abusive attacks on his honor, reputation and private or family life.” *Id.* The right to privacy is a fundamental constitutional right, opposable to the state and private parties. *Arroyo v. Rattan Specialties, Inc.*, 117 D.P.R. 35, 64 (1983) (citing *Colón v. Romero Barceló*, 112 D.P.R. 573, 576 (1982)). The fundamental right to privacy requires the state and private citizens not to meddle in people's lives. *Colón*, 117 D.P.R. at 576. The right to privacy purports to protect two fundamental interests: (1) avoid the disclosure of personal matters and (2) allow citizens to make crucial decisions independently. *López v. E.L.A.*, 165 D.P.R. 280, 294 (2005) (citing *Arroyo*, 117 D.P.R. at 75)). The fundamental right to privacy may be raised only by a person who, within the particular circumstances of the case, has a real expectation that his privacy is respected and that society is

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

willing to recognize that expectation as legitimate or reasonable. *Pueblo v. Santiago Feliciano*, 139 D.P.R. 361, 384 (1995) (citing *Pueblo en interés menor N.R.O.*, 136 D.P.R. 949 (1994)).

Here, LUMA is authorized to defend its customers' constitutional right to privacy. LUMA is required by Section 13.2(f) of the Operation and Maintenance Agreement ("OMA") to protect its customers' information from disclosure. Thus, LUMA will vigorously defend its customers' privacy rights as it directly interested in complying with the OMA. *E.L.A. v. P.R. Tel. Co.*, 114 D.P.R. 394, 401 (1983) (ruling that telephone company could protect its customers' right to privacy against the state). Also, the Claimants are not in a position to defend their fundamental right to privacy as they are unaware of the Energy Bureau's Order from May 31, 2021. *See id.* at 400.

The Claimants named in the Excel Spreadsheet reasonably expect their privacy to be respected. LUMA's clients expect all their information and transactions with LUMA to be confidential. When the Claimants began their internal complaints against LUMA, they did not expect their claims to be disclosed as LUMA does not disclose its customers' information. Hence, the Claimants expect that their extrajudicial claims not be undisclosed and remain within LUMA's records. Society recognizes that client information within a service utility, like LUMA, has a reasonable expectation of privacy. The Supreme Court of Puerto Rico has ruled similarly by stating that society understands that client information within Banks and Telephone Companies have a reasonable expectation of privacy. *Weber Carrillo v. E.L.A.*, 190 D.P.R. 688, 713 (2014); *RDT Const. Corp. v. Contralor*, 141 D.P.R. 424, 443 (1996). Also, in this case, the Claimants have not waived their constitutional right to privacy because the waiver requirements have not been met. *López Tristani v. Maldonado*, 168 D.P.R. 838, 855 (2006) (stating that a party must waive its right to privacy clearly, voluntarily, and knowingly).

LUMA submits that the Excel Spreadsheet filed on June 30, 2022, contains private information that should be granted confidential status. This designation is a reasonable and necessary measure to protect the right to privacy of the Claimants that filed extrajudicial against LUMA. LUMA respectfully submits that the Excel Spreadsheet contains confidential information that Energy Bureau should maintain confidentially to safeguard the Claimants’ integrity and privacy.

IV. Identification of Confidential Information.

In compliance with the Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009, below is a table summarizing the hallmark of this request for confidential treatment.

	Document or file	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
1	Excel spreadsheet includes all pending judicial and extrajudicial damages claims known to LUMA for events arising as a result of the operation of the T&D System between June 1, 2021, and May 31, 2022.	1-7	Constitutional Right to Privacy under the Constitution of the Commonwealth of Puerto Rico. Const. P.R., Art. II § 8.	June 30, 2022

WHEREFORE, LUMA respectfully requests that the Energy Bureau **grants** this request to keep the Excel Spreadsheet confidential as discussed above.

RESPECTFULLY SUBMITTED.

We hereby certify that we filed this Motion using the electronic filing system of this Energy Bureau and that we will send an electronic copy of this Motion to attorneys for PREPA, Katuska Bolaños-Lugo, kbolanos@diazvaz.law, and Joannely Marrero-Cruz, jmarrero@diazvaz.law.

In San Juan, Puerto Rico, this 11th day of July 2022.



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