

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

NEPR Received: Jul 13, 2022 5:08 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: Informative Motion Relating to Energy
Bureau's Approval of Nine Tranche 1 BESS Projects**

**INFORMATIVE MOTION RELATING TO ENERGY BUREAU'S APPROVAL OF
NINE TRANCHE 1 BESS PROJECTS**

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. Procedural and Factual Background

On April 27, 2022, this honorable Puerto Rico Energy Bureau of the Public Service Regulatory Board (the "Energy Bureau") issued a Resolution and Order (the "April 27th Order") in connection with the eighteen (18) renewable solar photovoltaic ("PV") energy projects of the Tranche 1 renewable energy procurement¹ that were approved by the Energy Bureau by Resolution and Order of February 2, 2022 (the "Approved PV Projects").

In the April 27th Order, the Energy Bureau issued separate orders to LUMA and PREPA with the purpose of expediting the work necessary to lead to PREPA's execution of the Power Purchase Agreements ("PPOAs") for the Approved PV Projects. To that end, the Energy Bureau

¹ This is the first procurement tranche to be conducted by the Puerto Rico Electric Power Authority ("PREPA") contemplated under the Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, *In re: Review of the Integrated Resource Plan of the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2018-0001, of August 24, 2020.

ordered LUMA, among other things, to file with the Energy Bureau copy of the “technical studies (i.e., Facilities Studies: Network Upgrades and Final Report: Interconnection Studies)” and copy of the results of the Tranche 1 technical studies for the Approved PV Projects by May 15 and 30, respectively. *See* April 27th Order at page 1.

On April 28, 2021, PREPA submitted to the Energy Bureau a document titled *Memorandum of Law in Support of Request for Confidential Treatment of Attachment A* and, as Attachment A (under seal), a document titled *Informative Motion and Responses to Resolution and Order Issued on April 11, 2022* (“April 28th Motion”). In the confidential April 28th Motion, PREPA provided information on proposals for utility scale battery energy storage system (“BESS”) projects and a Virtual Power Plant (“VPP”) project under evaluation by PREPA in connection with the Tranche 1 RFP process.

After other procedural events, on May 31, 2022, LUMA filed with the Energy Bureau a *Motion Submitting Final Interconnection Studies for Eighteen Tranche 1 Projects Required under Energy Bureau’s Resolution and Order of April 27, 2022, and Request for Confidential Treatment* (“May 31st Motion”) submitting, as Exhibit 1 and under seal of confidentiality, the Final Interconnection Study Reports for the eighteen (18) Approved PV Projects, as well as three (3) projects for Battery Energy Storage Systems (“BESS”) (the “May 31st BESS Projects”), comprised of 21 studies for 19 points of interconnection, which were also being submitted to PREPA.² The

² Prior to this filing, LUMA had informed that the report for the final technical interconnection study for each of the Approved Projects, including the network upgrades studies, would be submitted as a single package by the May 30th deadline, and requested therefore that the deadline to submit the network upgrades studies be changed to that date rather than May 15. *See* LUMA’s *Motion in Compliance with the Progress Report and Updated Task Schedule Requirements of the Energy Bureau’s Resolution and Order of April 27, 2022* filed on April 29, 2022.

Final Interconnection Study Reports in the confidential Exhibit 1 included, for each Approved PV Project and May 31st BESS Project, an executive summary and the following appendices: (a) Interconnection Studies Summary Report (b) Facility Study Point of Interconnection (“POI”) Cost Estimates, (c) Facility Study Network Upgrade Cost Estimates, and (d) LUMA Interconnection Facility Works. *See* May 31st Motion, Exhibit 1. LUMA also included in the confidential Exhibit 1 a report of the results of a System Impact & Facility Study (“System Impact & Facility Study”) conducted by LUMA, including a summary and analytical detail for a cluster study of the system developed to determine required transmission system network upgrades and including cost estimates and cost allocation by project, which informed the Final Interconnection Study Report for each project. *See id.*³

On June 13, 2022, this Energy Bureau issued a Resolution and Order (the “First June 13th Order”) ordering LUMA, among other directives, to proceed with the transmission system network upgrades identified by LUMA in Exhibit 1 of the May 31st Motion as necessary to interconnect the Approved PV Projects as per the System Impact & Facility Study results report

Also on June 13, 2022, the Energy Bureau issued a Resolution and Order (the “June 13th Order”) approving f nine (9) four-hour duration utility scale BESS projects with a total capacity of 490 MW (the “Approved BESS Projects”) and one (1) 17 MW Virtual Power Plant (“VPP”). These approved projects are identified in an Appendix A of the June 13th Order. The nine (9) Approved BESS Projects, included the three (3) May 31st BESS Projects for which LUMA

³ LUMA submitted subsequently filed with the Energy Bureau a Memorandum of Law in support of the request for confidentiality of Exhibit 1 of the May 31st Motion. *See Memorandum of Law in Support of Confidential Treatment of Interconnection Studies Submitted by LUMA on May 31, 2022*, filed with the Energy Bureau on June 10, 2022.

submitted to this Energy Bureau Final Interconnection Study Reports via the May 31st Motion and which were considered in the System Impact & Facility Study also submitted on that date.

In the June 13th Order, the Energy Bureau also ordered PREPA to finalize its negotiations with the proponents of these approved projects, present the final Energy Storage Service Agreements (“ESSAs”) and Grid Services Agreement to the Energy Bureau for their final approval, and thereafter submit to the Energy Bureau each agreement no later than ten (10) days after finalizing such negotiations. In support of its determinations, the Energy Bureau indicated in the June 13th Order, among other things, that the energy storage capacity is needed to support broader reliability and resiliency, for the integration of renewable energy resources in support of Act 17-2019⁴, and to reduce local air pollution by not delaying the planned retirement of certain PREPA fossil-fueled power plants. Among other determinations in support of the approval of these projects, the Energy Bureau also determined, among others, that energy storage as a capacity resource is urgent.

On June 22, 2022, LUMA submitted a motion to the Energy Bureau (“June 22nd Motion”) requesting the Energy Bureau to reconsider its determination in the First June 13th Order insofar as it required LUMA to seek federal funding for the transmission system network upgrades for the Approved PV Projects, and in the meantime, fund these upgrades with the Capital Budget Non-Federally Funded to be offset by federal funding that is obtained. *See LUMA’s Urgent Motion Requesting Reconsideration of Energy Bureau’s Resolution and Order of June 13, 2022, and Stay of All Directives Therein* of that date. Specifically, LUMA raised concerns as to whether these projects would qualify for federal funding, the potential impacts of this approach on the funding

⁴ Known as the “Energy Public Policy Act”.

for other more critically needed projects and/or customer rates, and the inconsistency of this approach with customary industry practice of having the developer pay these costs, among others. Given the concerns raised, LUMA also requested the Energy Bureau to stay the directives in the June 13th Order until the issues raised by LUMA are duly considered and resolved. *See LUMA's Urgent Motion Requesting Reconsideration of Energy Bureau's Resolution and Order of June 13, 2022, and Stay of All Directives Therein* of that date.

II. Information Submitted Herein By LUMA

LUMA hereby respectfully informs this honorable Energy Bureau that, as of this date, the interconnection studies for only three (3) Approved BESS Projects have been completed- that is, the May 31st BESS Projects- which were submitted to this Energy Bureau on May 31, 2022. The interconnection studies for the remaining six (6) Approved BESS Projects are at a very early stage. PREPA requested LUMA to perform the studies for these six (6) Approved BESS Projects on June 15, 2022, as result of the June 13th Order.

The interconnection studies that have been requested for each of the mentioned six (6) Approved BESS Projects will be the same types of studies conducted by LUMA for the Approved PV Projects and the three (3) May 31st BESS Projects, submitted by LUMA with the May 31st Motion. Accordingly, the studies for each project will consist of a package with: (a) Interconnection Studies Summary Report, (b) Facility Study Point of Interconnection (“POI”) Cost Estimates, (c) Facility Study Network Upgrade Cost Estimates, and (d) LUMA Interconnection Facility Works. In addition, LUMA will conduct an update of the System Impact & Facility Study and its report submitted with the May 31st Motion which, as mentioned, is a cluster study of the transmission system developed to determine required transmission system network upgrades, to

account for the mentioned six (6) Approved BESS Projects, which study will inform the Final Interconnection Study Report of each of these projects (the “Updated System Impact & Facility Study”).

LUMA anticipates that the preparation of the interconnection studies described above for the mentioned six (6) Approved BESS Projects will take approximately twenty (20) weeks. Therefore, the interconnection costs for these six (6) Approved BESS Projects will not have been determined until then and any current negotiations between PREPA and the developers of these projects to execute ESSAs will not be informed by this data.

LUMA would also like to inform this honorable Energy Bureau that the Updated System Impact & Facility Study will take into account the interconnection of the six (6) Approved BESS Projects with a total capacity of 270 MW in conjunction with the interconnection of the eighteen (18) Approved PV Projects and three (3) May 31st BESS Projects with a total capacity of 844 MW of solar PV and 220 MW of BESS. LUMA has identified that at least three (3) of the mentioned six (6) Approved Bess Projects share POI locations with the Approved PV Projects. For these and other possible scenarios associated with the addition of these BESS resources not previously contemplated, the costs for transmission system network upgrades estimated in the original System Impact & Facility Study may substantially change. Additionally, the POI costs of the individual Approved PV Projects and the May 31st BESS Projects may also substantially change and may result in the need to update some of the components of the Final Interconnection Study Reports for one or more of these projects. Therefore, LUMA respectfully alerts this Energy Bureau to the possibility that these cost variances are not being currently considered by PREPA and the developers of the Approved PV Projects and the May 31st BESS Projects in connection with their

negotiation and the execution of the PPOAs or ESSAs or for those projects. These uncertainties further support LUMA's request in its June 22nd Motion for the stay of the directives in the First June 13th Order until the issues related to the funding of the costs for the necessary transmission system upgrades are resolved.

LUMA has performed an initial economic analysis and comparison with benchmark data on BESS technologies in North America and it is attached to this informative motion, under seal of confidentiality, as Exhibit 1. The results of this analysis demonstrate that Energy Storage Resources can be acquired at reasonable prices. LUMA finds that deviating from reasonably priced Energy Storage Resources is unnecessary given the validation of the procurement process and that the market signals to developers should reflect this intention.

In sum, for the reasons provided above, the current negotiations for the PPOAs for the eighteen (18) Approved Projects and for the ESSAs for the nine (9) Approved BESS Projects do not currently take into account the anticipated costs of interconnection for these projects, given that these will be determined or may change once the Updated System Impact & Facility Study accounting for the totality of these projects is completed. As mentioned, this study and the individual interconnection studies for the pending six (6) Approved BESS projects is estimated to be completed in twenty (20) weeks.

The requirements above do not affect the selected VPP Project since this project will connect to the distribution system. LUMA looks forward to the integration of this VPP resource, as it represents an opportunity to develop real-life experience in management of such resources within the Bulk Power System.

III. Request for Confidentiality

LUMA respectfully requests that the initial economic analysis and comparison with benchmark data on BESS technologies in North America included in *Exhibit 1* herein be maintained confidential by this honorable Energy Bureau given that it contains information on the pricing of the Approved BESS Projects and analysis and discussion related to this information, as well as the Commercial Operations Date (“COD”) of the projects. LUMA provides below the Memorandum of Law in support of this request for confidentiality of *Exhibit 1* 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 (“Policy on Confidential Information”).

A. Memorandum of Law in Support of Request for Confidentiality

1. Applicable Laws and Regulations

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, this 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* Policy on Confidential Information, Section A. 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 a “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 the Policy on Confidential Information (CEPR-MI-2016-0009)).

2. Grounds for Confidentiality

The information in *Exhibit 1* includes the pricing of the Approved BESS Projects in the Tranche 1 procurement process which at this date is ongoing and the object of negotiations and strategies, as well as analysis and discussion related to this pricing. It also includes information on the COD of the projects which forms part of the terms of their confidential ESSAs. Consistent with the foregoing, this honorable Energy Bureau has maintained under seal the documents including confidential information related to the Tranche 1 Request for Proposals (“RFP”) process. To that end, through its Resolution and Order of February 2, 2022 (“February 2nd Order”) in this

proceeding, this honorable Energy Bureau established that such confidential treatment is required pursuant to Sections 4(g) and 10.2 of the Joint Regulations 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 (“Regulation 8815”), and that only once the RFP is completed, shall it be made public. *See* the February 2nd Order at footnote 28. This Energy Bureau’s action is consistent with the interest of maintaining the purity of the procurement process. In light of the foregoing, LUMA asks that this Energy Bureau approve this request for confidential treatment of *Exhibit 1*.

Additionally, LUMA is required to maintain the pricing and COD information in Exhibit 1 confidential pursuant to the provisions of Section 13 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 T&D OMA], or that constitutes Work Product, shall be deemed “Owner Confidential Information” (*see* T&D 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 [T&D OMA and other specified agreements contemplated under the T&D OMA]” (*see id.* at Section 13.2(a)(ii)). The pricing and COD information in question was transmitted by PREPA to LUMA as part of the documentation of the proposals received by PREPA in response to the Tranche 1 Request for Proposal and for purposes of LUMA’s compliance with its obligations under the T&D

OMA as T&D System operator, which include the technical evaluation related to the interconnection of these resources. Therefore, this information constitutes Owner Confidential Information under the T&D OMA which LUMA is obligated to maintain in confidence under Section 13 of the T&D OMA.

In light of the foregoing, LUMA asks that this Energy Bureau approve this request for confidential treatment of the pricing and COD information and related analysis and discussion included in *Exhibit 1* based on it being information forming part of the proposals submitted in an ongoing procurement process subject to confidentiality under Regulation 8815, as well as information subject to confidentiality under the T&D OMA. LUMA is submitting herein a public redacted version and a confidential unredacted version of Exhibit 1. The table below identifies this confidential information:

Document Name	Date Submitted	Confidential Information	Basis of Confidentiality Request
Exhibit 1 to Informative Motion Relating the Energy Bureau’s Approval of Nine Tranche 1 BESS Projects	July 8, 2022	Page 2: Table: lines 2-6 and 8-11; and following the Table: lines 1 (except for first 12 words) to 10 and lines 12 (except for the first three words) and 13. This redacted information is associated with the pricing of the projects, except for lines 4 and 5, which mostly contain information on the commercial operations date of the projects which is part of the confidential ESSAs.	Sections 4(g) and 10.2 of Regulation 8815 and Section 13 of the T&D OMA

WHEREFORE, LUMA respectfully requests the Energy Bureau to **take notice** of the aforementioned, **accept** Exhibit 1 included in this Motion and **approve** the request for confidentiality of Exhibit 1 requested herein.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 13th of June 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

/s/Laura T. Rozas
Laura T. Rozas
RUA Núm. 10,398
Laura.rozas@us.dlapiper.com

Exhibit 1

Comments on Energy Bureau Resolution and Order of June 13, 2022

Confidential and Redacted Versions Submitted



Comments on Energy Bureau
Resolution and Order of June 13,
2022

NEPR-MI-2020-0012

Confidential

July 8, 2022

BESS RFP Results versus Lazard 7.0 (2021) Benchmarks per the PREB's R&O

In review of the Energy Bureau's analysis of BESS pricing relative to Lazard's benchmarks, LUMA finds as follows:

Lazard Wholesale	(100 MW / 400 MWh)	\$131	[REDACTED]	\$232
Project AZ-1-E		[REDACTED]		
Project L-3-E		[REDACTED]		
Project H-3-E		[REDACTED]		
Project AA-2-E		[REDACTED]		
Project M-3-E		[REDACTED]		
Lazard Wholesale (PV + Storage)	(50 MW / 200 MWh)	\$85	[REDACTED]	\$158
Project AX-1-E		[REDACTED]		
Project A-2-E		[REDACTED]		
Project C-2-E		[REDACTED]		
Project W-2-E		[REDACTED]		

The Tranche 1 BESS Systems awarded for the Tranche 1 Procurement Process [REDACTED]
[REDACTED]
[REDACTED].
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

The procurement process indicates that the right developer/project can deliver reasonable pricing within the Lazard ranges. [REDACTED]
[REDACTED]