

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

NEPR

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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 and Request for
Extension to Submit Supplemental Interconnection
Studies for Two Pending Solar PV Projects**

**INFORMATIVE MOTION AND REQUEST FOR EXTENSION TO SUBMIT
SUPPLEMENTAL INTERCONNECTION STUDIES FOR TWO PENDING SOLAR PV
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

1. 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 determined by the Energy Bureau by Resolution and Order of February 2, 2022, to be compliant with the IRP and Modified Action Plan (the “Approved PV Projects”).

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, wherein the Energy Bureau approved the current Integrated Resources Plan and Modified Action Plan (the “IRP and Modified Action Plan”).

2. 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 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. In addition, the Energy Bureau ordered PREPA to file with the Energy Bureau the execution copies of the PPOAs for the Approved PV Projects by June 30, 2022.

3. 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 reports of the Final Interconnection Studies ("Final Interconnection Studies" or, individually, "Final Interconnection Study") for the eighteen (18) Approved PV Projects, as well as three (3) projects for Battery Energy Storage Systems ("BESS"), comprised of 21 studies for 19 points of interconnection, which were also being submitted to PREPA.² LUMA also included in the confidential Exhibit 1 a report of the results of a System Impact & Facility Study

² Prior to this filing, LUMA had informed that the report for the final technical interconnection study for each of the Approved PV 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.

(“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.* at Exhibit 1.

4. On June 13, 2022, this Energy Bureau issued a Resolution and Order (the “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.

5. Also on June 13, 2022, the Energy Bureau issued a Resolution and Order approving nine (9) four-hour duration utility scale BESS projects and one (1) 17 MW Virtual Power Plant (“VPP”). The nine (9) Approved BESS Projects, included the three (3) BESS Projects for which LUMA submitted to this Energy Bureau Final Interconnection Studies via the May 31st Motion and which were considered in the System Impact & Facility Study also submitted on that date.

6. 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 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 thereafter obtained, if any. *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. LUMA also requested the Energy Bureau to stay the directives in the June 13th Order until the issues raised by LUMA in the June 22nd Motion 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.

7. On June 30, 2022, PREPA filed a motion with the Energy Bureau wherein PREPA: (a) submitted, as Attachment A, executed PPOAs for nine (9) Approved PV Projects totaling 430.1 MW; (b) requested a two (2)-week extension to submit the PPOAs for another five (5) Approved PV Projects, two with integrated BESS, with an aggregate capacity of 305.91 MW and providing information about the status and negotiations of these five (5) projects in Attachments B-E of their motion (the “Five Pending PPOAs”); (c) and requested a three (3)-week extension to file PPOAs for two (2) other Approved PV Projects (“Two Pending PV Projects”) totaling 45.675 MWs following receipt of the final supplemental study information for these projects from LUMA (the “Two Pending PPOAs”). *See PREPA’s Motion To Submit Execution Copies of PPOAs in Compliance with the April 27 and June 13 Orders, Request for Additional Time to Submit Certain PPOAs and Memorandum of Law Requesting Confidential Treatment of PPOAs and Exhibits* of that date (“June 30th Motion”).

8. In the June 30th Motion, PREPA indicated that the reason for the delay in connection with the Five Pending PPOAs were issues raised by the proponents, including “several relating to contract pricing, including in particular the impacts of inflation and supply chain disruptions on project cost estimates made nearly a year ago”. *See* June 30th Motion at page 6. In addition, PREPA indicated that some proponents raised concerns regarding the estimated costs for interconnection for their projects (*see id.* at page 6) and the uncertainty around the final interconnection costs (*see id.* at p. 7).

9. Regarding the Two Pending PPOAs, PREPA explained in the June 30th Motion that these correspond to projects that form part of a group of three (3) Approved Projects (referred to by PREPA as “Category 2 projects) that need to relocate their respective interconnection facilities to “reduce flood zone mitigation costs”. *See id.* at p. 9. According to PREPA, “[a]ll of these Category 2 projects require supplemental Interconnection Studies [(“Supplemental Interconnection Studies” or individually, “Supplemental Interconnection Study”)] to be performed, and their proponents have agreed to bear the cost of such studies” (*see id.*) and that one of these Category 2 proponents had received the results of its studies and executed its PPOA, which was submitted with the June 30th Motion (*see id.*).

10. On July 8, 2022, the Energy Bureau issued a Resolution and Order (the “July 8th Order”) approving the nine (9) PPOAs included in PREPA’s June 30th Motion (*see* July 8th Order at p. 3) and granting PREPA an extension to file the executed Five Pending PPOAs until July 22, 2022 (*see id.* at p. 4). However, the Energy Bureau denied PREPA’s request for the extension related to the Two Pending PPOAs that are awaiting Supplemental Interconnection Study information from LUMA and directed (i) LUMA to complete the Supplemental Interconnection Studies and “provide cost estimates sufficient to finalize an execution copy” of the Two Pending PPOAs by July 22, 2022, and (ii) PREPA to work expeditiously with LUMA and the Proponents to file the execution copies of the PPOAs by July 29, 2022. *See id.*

11. On July 13, 2022, LUMA submitted a motion informing this honorable Energy Bureau that, as of the date of the motion, the Final Interconnection Study Reports for three (3) Approved BESS Projects had been completed- that is, those submitted by LUMA with the May

31st Motion. *See Informative Motion Relating to Energy Bureau’s Approval of Nine Tranche 1 Bess Projects* of that date at p. 5. LUMA further informed that (a) the Interconnection Studies for the remaining six (6) Approved BESS Projects were requested by PREPA on June 15, 2022, as result of the June 13th Order (*see id.*) and (b) the estimated timeframe to complete these studies was twenty (20) weeks (*see id.* at p. 6).³

12. On July 18, 2022, PREPA filed a motion requesting the Energy Bureau to grant PREPA an additional extension to finalize the contract terms and submit the executed Five Pending PPOAs of ten (10) business days from the approval by the Fiscal Oversight and Management Board of the contracts for the PREPA consultants advising on the negotiations of these PPOAs. *See Motion Requesting Extension of Time to Submit Execution Copies of Additional PPOAS In Compliance with July 8 Resolution and Order* of that date (“July 18th Motion”).

II. Information Submitted Herein and LUMA’s Request

A. Supplemental Interconnection Studies for Two Pending PV Projects

13. LUMA hereby respectfully provides additional information regarding the Two Pending PV Projects to further inform this honorable Energy Bureau on issues related to the completion of the Supplemental Interconnection Studies for these projects.

14. The Two Pending PV Projects form part of the eighteen (18) Approved PV Projects. The Two Pending PV Projects also form part of a category of three (3) projects (for purposes of

³ LUMA also informed that it needed to conduct an update of the System Impact & Facility Study to account for the mentioned six (6) Approved BESS Projects, which study would inform the Final Interconnection Study Report of each of these projects (*see id.* at pp. 5-6), and that the costs for transmission system network upgrades estimated in the original System Impact & Facility Study may substantially change, as well as the point of interconnection costs for some of the projects (*see id.* at p. 6).

this motion, Projects A, B and C) among the Approved PV Projects, referred to by PREPA as Category 2 projects, which, as informed by PREPA in their June 30th Motion, are projects that needed to relocate their respective interconnection facilities to “reduce flood zone mitigation costs” and, as a result, required Supplemental Interconnection Studies (*see* June 30th Motion at p. 9). As further indicated by PREPA in their June 30th Motion, the proponents of these projects agreed to bear the cost of such studies. *See id.* In this regard, LUMA further informs herein that the agreement with these proponents was that any secondary studies would be paid by the proponents prior to the commencement of their respective study. This is a commonly accepted utility practice.

15. The proponent for one of the Category 2 projects (referred to for purposes of this motion as “Project C”) paid for the necessary Supplemental Interconnection Study, and this study was completed by LUMA. *See id.* PREPA executed the PPOA for Project C, which executed PPOA was submitted by PREPA to the Energy Bureau with the June 30 Motion. *See id.*

16. LUMA hereby informs that the Proponent for Projects A and B (i.e., the Two Pending Projects) (for purposes of this motion, “Proponent AB” (both projects are owned by the same Proponent)) to this date has not asked that LUMA proceed with the Supplemental Interconnection Study for these projects, in light of a series of circumstances described below. LUMA has been in direct and constant communication with Proponent AB and LUMA stands ready to perform the Supplemental Interconnection Study. Proponent AB has indicated to LUMA its intention to proceed with the Supplemental Interconnection Study once it is able to engage with PREPA and its Consultants on commercial issues. On July 19th, Proponent AB issued a letter to PREPA in this regard. See Exhibit 1.

17. LUMA anticipates that the preparation of the Supplemental Interconnection Study for each Project A and Project B and submittal thereof to PREPA will take approximately three (3) weeks following receipt of Proponent AB's request to conduct each of these studies and payment thereof respectively. The preparation of the Supplemental Interconnection Studies will require modification and updating of the following documents in the Final Interconnection Studies of these projects: Basis of Estimate; Scope of Work; Bill of Materials: Civil; Bill of Materials: Conduit; Bill of Materials: Foundations; LUMA Land Administration and Permits Review; Project Schedule; Project Risk Matrix; Class 3 Cost Estimate; Bill of Material: Distribution; Bill of Material: Transmission Line; Environmental Review; and Total Interconnection Costs. The resulting Supplemental Interconnection Studies will allow LUMA to provide the cost estimates for the interconnection of these projects in line with the costs provided to all other proponents of the Approved PV Projects and in accordance with Prudent Utility Practice. Therefore, LUMA respectfully requests that the Energy Bureau take notice of this situation and extend the deadline for LUMA to complete the Supplemental Interconnection Studies for Projects A and B and to submit these to PREPA, accordingly.

B. Cost Estimates Sufficient for Execution of PPOAs

18. In the July 8th Order, the Energy Bureau also directed LUMA to "provide cost estimates sufficient to finalize an execution copy" for Projects A and B. *See* July 8th Order at p. 4. LUMA would also like to respectfully inform this honorable Energy Bureau that LUMA can only provide the cost estimates for interconnection for Projects A and B based on the Supplemental Interconnection Studies it prepares for these projects. LUMA does not generate the estimates for any other costs for these or other projects in the Tranche 1 procurement process and is not involved

in the negotiation of the PPOAs with the proponents of these projects, including any negotiation on the re-pricing of these PPOAs based on the interconnection costs. Therefore, LUMA does not have knowledge or control over the extent of the sufficiency of the information needed to finalize these PPOAs, which is PREPA's role.

III. Request for Confidentiality

19. LUMA respectfully requests that *Exhibit 1* of this Motion be maintained confidential by this honorable Energy Bureau given that it contains information related to negotiations between PREPA and a proponent of the ongoing Tranche 1 Procurement process. 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

20. 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).

21. 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.)

22. 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).

23. 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.

24. 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

25. The information in *Exhibit 1* includes information on the negotiations with Proponent AB, the proponent of two Approved PV Projects, related to the Tranche 1 procurement process which as of this date is ongoing and the object of negotiations, proposals and strategies. 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*.

26. Additionally, LUMA is required to maintain 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)). *Exhibit 1* is related to information 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.

27. In light of the foregoing, LUMA asks that this Energy Bureau approve this request for confidential treatment of *Exhibit 1*, in its entirety, based on this document containing information related to 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. The table below identifies this confidential information:

Document	Date Submitted	Pages in which Confidential Information is Found	Summary of Legal Basis of Confidentiality Request
Exhibit 1	July 21, 2022	Pages 1-4	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, under seal of confidentiality, and **approve** the request for confidentiality of this Exhibit; and **grant** an extension of the deadline to complete the Supplemental Interconnection Studies for Projects A and B, as identified herein, until three (3) weeks following LUMA's receipt of the request from the proponent of these projects to proceed with these studies and the payment thereof, if such request and payments are received.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 21st of July 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.



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Exhibit 1

[Submitted under Seal of Confidentiality]