

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

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CASE NO. NEPR-MI-2021-0004

**IN RE: REVIEW OF LUMA’S INITIAL
BUDGETS**

SUBJECT: Memorandum of Law in Support of Request for Confidential Treatment of Exhibit 1 of LUMA’s Motion for Partial Reconsideration of Resolution and Order of August 26, 2022, and Proposing Alternative Schedule for Submission and Consideration of Financial Actuals

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
EXHIBIT 1 OF LUMA’S “MOTION FOR PARTIAL RECONSIDERATION OF
RESOLUTION AND ORDER OF AUGUST 26, 2022, AND PROPOSING
ALTERNATIVE SCHEDULE FOR SUBMISSION AND CONSIDERATION OF
FINANCIAL ACTUALS”**

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 August 31, 2022, LUMA filed a *Motion for Partial Reconsideration of Resolution and Order of August 26, 2022, and Proposing Alternative Schedule for Submission and Consideration of Financial Actuals* (“Motion for Partial Reconsideration”), including as Confidential Exhibit 1 a document containing its preliminary FY2022 numbers. LUMA submitted Exhibit 1 in its native Excel format and under seal of confidentiality as it contains LUMA’s work product and numbers that are preliminary in nature. LUMA also informed that it intended to submit a Memorandum of Law within ten (10) days in support of its request for confidential treatment of such information pursuant to the Energy Bureau’s Policy of Management Confidential Information, CEPR-MI-

2016-0009 ”, issued on August 31, 2016, as amended by the Resolution dated September 16, 2016 (“Policy on Management of Confidential Information”).

As anticipated in its August 31, 2022 Motion for Partial Reconsideration, LUMA submits this Memorandum of Law setting forth the basis for which LUMA is entitled to file Exhibit 1 to that motion under seal of confidentiality. As explained below, the Energy Bureau should protect Exhibit 1 from public disclosure as it is a working document that is kept confidential by LUMA.

II. Applicable Laws and Regulations to Submit Information Confidentially Before the Energy 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).

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.

III. Request for Confidentiality:

It is respectfully submitted that Exhibit 1 to LUMA’s August 31st Motion for Reconsideration is confidential **and** includes preliminary actual results provided by LUMA to the Fiscal Oversight Management Board (“FOMB”) on August 19, 2022 as part of the process for the approval and certification of the FY2023 budgets. LUMA filed Exhibit 1 in good faith and confidentially, to comply with the Bureau’s request for the FY2022 financial actuals. LUMA explained, however,

that it continues to work on its fiscal year-end report. In addition to constituting a preliminary working document that has not been publicly disclosed, Exhibit 1 contains sensitive commercial information as to the process to calculate its preliminary actual financial results.

Section D of the Bureau's Confidential Management Policy states the following regarding 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.

Those authorized representatives who have signed the Non-Disclosure Agreement may only review the documents validated as CEII at the [Energy Bureau] or the Producing Party's offices. During the review, the authorized representatives may not copy or disseminate the reviewed information and may bring no recording device to the viewing room.

Under the Industrial and Trade Secret Protection Act of Puerto Rico, Act 80-2011, 10 P.R. Laws Ann. §§ 4131-4144 (2019), 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. 80-2011.¹ They include, but are not limited to, processes, methods and mechanisms, manufacturing processes, formulas, projects or patterns to develop machinery and

¹ Relatedly, Rule 513 of the Rules of Evidence of Puerto Rico provides that the owner of a trade secret may invoke the privilege to refuse to disclose, and to prevent another person from disclosing, trade secrets, provided that these actions do not tend to conceal fraudulent actions or lead to an injustice. 32 P.R. Laws

lists of specialized clients that may afford an advantage to a competitor. *See* Statement of Motives, Act 80-2011. *See also* Puerto Rico Open Data Law, Act 122-2019, Article 4 (ix) (exempting from public disclosure trade secrets) and Article 4(x) (exempting from public disclosure commercial or financial information whose disclosure will cause competitive harm).

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).

Exhibit 1 to LUMA's August 29th Motion reveals LUMA's preliminary actual results for FY2022 as of August 19, 2022. Those results are subject to change. LUMA appreciates the Bureau's interest in transparency and that is why LUMA has filed for the public record in this and other Bureau proceedings, thousands of documents and detailed information. However, as a matter of law, it is respectfully submitted that Exhibit 1 is a private working document that is not subject to public review. Neither the T&D OMA nor any legal provision that LUMA has been able to identify, requires public disclosure of drafts of LUMA's internal documents.

Because Exhibit 1 is preliminary in nature and subject to change, its disclosure will inure more harm to the public interest than good, given that the public will not be reading a finalized or approved version of the documents. Premature public disclosure of this information will harm LUMA's commercial interests by requiring untimely disclosure of LUMA's private and confidential working documents that do not currently reflect the full or final scope of FY2022 financial actuals.

The right of the public to access information relevant to the Bureau's consideration of LUMA's Initial Budgets is duly protected and promoted with the disclosure of the public versions

Ann. Ap. VI, R. 513. If a court of law mandates disclosure of a trade secret, precautionary measures should be adopted to protect the interests of the owner of the trade secret. *Id.*

of the FY2023 Certified Budget and of the response to the Requests for Information that are already on the record. The designation of Exhibit 1 to the August 29th Motion as confidential will not preclude the public in any material or cognizable manner, from gaining access to relevant and necessary information concerning the FY2023 Certified Budget.

Respectfully, Exhibit 1 to the Motion for Partial Reconsideration does not provide information that is relevant for citizens to evaluate the adequacy of LUMA’s proposed spending programs nor to understand and learn about the proposed allocation of PREPA funds. Any possible interest in public viewing the information that LUMA hereby requests be kept confidential is outweighed by the harm to be caused to LUMA and to the public interest if summaries of draft internal commercial documents are disclosed.

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 hallmarks 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	Exhibit 1 to LUMA’s August 29 th Motion for Partial Reconsideration	Native Excel document in its entirety	Trade secret information pursuant to Section D of the Bureau’s Confidential Management Policy	August 31, 2022

WHEREFORE, LUMA respectfully requests that the Energy Bureau **grants** this request to keep Exhibit 1 of LUMA's August 31st Motion for Partial Reconsideration confidential.

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 12th of September, 2022.



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