

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

NEPR

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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 Portions of Response to Request No. 13 Submitted as Part of the Second Set of Responses to Requests for Information filed on October 12, 2022

MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL TREATMENT OF PORTIONS OF RESPONSE TO REQUEST NO. 13 SUBMITTED AS PART OF THE SECOND SET OF RESPONSES TO REQUESTS FOR INFORMATION FILED ON OCTOBER 12, 2022

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy ServCo, LLC and LUMA Energy, LLC (jointly "LUMA"), through the undersigned legal counsel, and respectfully submit the following:

I. Introduction

On October 12, 2022, LUMA filed a motion styled *Submission of Second Set of Responses to Requests for Information in Compliance with Bench Order Issued During Technical Conference of September 13, 2022*, which included as Exhibit 1 the second set of responses to the requests for information issued by the Energy Bureau through a bench order entered during the technical conference held on September 13, 2022. LUMA filed a redacted version of its response to RFI number 13 ("RFI no. 13") under the seal of confidentiality as it contained confidential information under the Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued August 31, 2016. 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 a portion of RFI no. 13. On the same date, LUMA filed confidentially, an unredacted version of the response with the Energy Bureau.

As anticipated in its October 12, 2022 Motion, LUMA submits this Memorandum of Law setting forth the legal basis for which LUMA is entitled to file portions of the RFI no. 13 under the seal of confidentiality. As explained below, the Energy Bureau should protect the portions of information of Exhibit 1's RFI no. 13 from public disclosure as they contain LUMA's sensitive commercial or trade secrets information. *See* Energy Bureau's Policy on Management of Confidential Information § D(1).

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 states 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. Grounds for Confidentiality

It is respectfully submitted that portions of LUMA’s response to RFI No. 13 constitute Trade Secret Information as they contain the Median Base Compensation that LUMA has designated for LUMA ServCo’s employee positions as well as secondees and which specific information, LUMA has not disclosed publicly. Section D(1) of the Bureau’s Confidential

Management Policy states, in its pertinent part, 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.

Under the Industrial and Trade Secret Protection Act of Puerto Rico, Act 80-2011, P.R. Laws Ann. tit. 10, §§ 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 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).

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 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.*

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).

The Energy Bureau should protect the Median Base Compensation included as part of LUMA's response to RFI No. 13 because it constitutes financial information that may prove advantageous or useful to LUMA's competitors in the energy business and utilities in Puerto Rico, as well as in the competitive job market for skilled and professional employees in Puerto Rico, as they could use the information to best LUMA in employee recruitment. Additionally, the Median Base Compensation is a component of LUMA's process, methods, or formula of allocating its financial resources to provide services in a competitive manner. LUMA takes reasonable security measures, such as this one, to maintain confidentiality of its employee's compensation. Disclosure of the information will compromise LUMA's ability to fairly compete in the future. LUMA respectfully submits that the Median Base Compensation that LUMA has designated for LUMA ServCo's employee positions as well as secondees should be designated as commercially sensitive or trade secret information. This designation is a reasonable and necessary measure to protect the information and enable LUMA to fairly compete in the future.

It is respectfully submitted that the right of public access to information is promoted and protected by the public version of the response to RFI No. 13. filed with the Energy Bureau. The protection of the specific information pertaining to the Median Base Compensation will not hinder nor preclude the public in a material way from gaining access to relevant and necessary information concerning the FY2023 Certified Budget. As such, the interest in the public viewing the information that LUMA hereby requests be kept confidential is outweighed by the harm that LUMA would be exposed to should the information be made available to the public.

IV. Identification of Confidential Information.

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

Attachment or Exhibit	Document or file name	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
1	Exhibit 1 of the Submission of Second Set of Responses to Requests for Information in Compliance with Bench Order Issued During Technical Conference of September 13, 2022	Response: TC-RFI-LUMA-MI-2021-0004-220913-PREB-013 at page 84 of the Submission.	Trade Secret Information under Section D(1) of Energy Bureau’s Policy on Confidential Information, CEPR-MI-2016-0009	October 12, 2022

WHEREFORE, LUMA respectfully requests the Energy Bureau to **take notice** of the above and **approve the request for confidential treatment** of the Median Base Compensation that LUMA has designated for LUMA ServCo’s employee positions as well as secondees found in *Exhibit 1* of LUMA’s *Submission of Second Set of Responses to Request for Information in Compliance with Bench Order Issued During Technical Conference of September 13, 2022*

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 24th day of October 2022.

I hereby certify that we filed this motion using the electronic filing system of this Puerto Rico Energy Bureau and that a copy of this memorandum will be sent to counsel for the Puerto Rico Electric Power Authority, kbolanos@diazvaz.law.



/s/ Margarita Mercado Echegaray

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