

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

NEPR

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IN RE: REVIEW OF LUMA'S CASE NO. NEPR-MI-2021-0004
INITIAL BUDGETS

SUBJECT: Motion Submitting Amended Response to RFI-LUMA-MI-2021-0004-20221220-PREB-001(a) Issued during the December 20, 2022 Closed Conference and Request for Confidential Treatment

MOTION SUBMITTING AMENDED RESPONSE TO RFI-LUMA-MI-2021-0004-20221220-PREB-001(a) ISSUED DURING THE DECEMBER 20, 2022 CLOSED CONFERENCE AND REQUEST FOR CONFIDENTIAL TREATMENT

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

I. Procedural Background and Submittal of Responses to December 20th RFIs:

1. On December 28, 2022, LUMA filed a *Motion Submitting First Set of Responses to Requests for Information Issued During December 20, 2022 Closed Conference and Request for Confidential Treatment* in the captioned proceeding (“December 28th Motion”). As Exhibit 1 to its December 28th Motion, LUMA included a first set of responses to the requests for information issued by the Energy Bureau through a bench order entered during the closed technical conference held on December 20th, 2022.¹

¹ Consistent with the confidential nature of the December 20th conference as well as the sensitive nature of the information submitted, LUMA submitted Exhibit 1 under seal of confidentiality. As informed in the December 28th Motion, the responses were drafted in accordance with the list of questions that were stated for the record by counsel for the Energy Bureau during the December 20th conference and the notes taken by the LUMA team and representatives throughout the closed Technical Conference.

2. At the time, LUMA in good faith identified and produced the information responsive to four (4) of the ten (10) requests issued during the December 20th closed conference and requested a brief additional term to submit the remaining information once the key personnel returned to work on January 11, 2023.²

3. Specifically, LUMA requested an extension of four (4) business days, or until January 11th, to submit the remaining responses to the RFIs issued by the Energy Bureau during the December 20th conference.

4. On January 11, 2022, LUMA filed a *Motion Submitting Responses to Pending Requests for Information Issued during December 20, 2022 Closed Technical Conference and Request for Confidential Treatment* (“January 11th Motion”). Exhibit 1 to the January 11th Motion included LUMA’s responses to six (6) pending RFIs issued by the Energy Bureau on December 20th relating to the topics of: (i) human resources dedicated to Customer Experience; (ii) allocation of those resources; (iii) engagement of outsourced professionals or seconded human resources in certain areas of the operation, such as lineworkers and customer experience representatives; (iv) investment in technology related to customer experience; and (v) quarterly breakdown of the Federally Funded and Non-Federally Funded Budgets. In addition, in the January 11th Motion LUMA informed that it would complete RFI-LUMA-MI-2021-0004-20221220-PREB-001, sub-part (d) as soon as possible, because the persons who may confirm the information were out of the office.

5. Consistent with its representation, on January 12, 2023, LUMA filed a *Motion Submitting Response to RFI-LUMA-MI-2021-0004-20221220-PREB-001(d) Issued during the December 20,*

² As explained through the December 28th Motion, the request for additional time to respond to some of the RFIs was a result of certain key LUMA employees being out of the office until January 10, 2023, on planned vacations during the holiday season.

2022 Closed Conference and Request for Confidential Treatment which included as *Exhibit 1* its response to RFI-LUMA-MI-2021-0004-20221220-PREB-001, sub-part (d). LUMA also requested confidential treatment for its response consistent with the confidential nature of the December 20th Closed Technical Conference.

6. Upon further review of its response to RFI-LUMA-MI-2021-0004-20221220-PREB-001, LUMA identified the need to clarify subpart (a) of such response, as submitted on December 28, 2022.

7. As a result, included as *Exhibit 1* to the present motion, LUMA respectfully submits an amended response to RFI-LUMA-MI-2021-0004-20221220-PREB-001, subpart (a) for purposes of clarifying the date to which the data produced corresponds. LUMA further includes the requested information as of June 2022 as per the RFI.

8. LUMA respectfully requests that its amended response to RFI-LUMA-MI-2021-0004-20221220-PREB-001, sub-part (a) be kept confidential by this honorable Energy Bureau pursuant to the Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, partially amended on September 16, 2016; and consistent with the confidential nature of the closed technical conference. Therefore, LUMA hereby includes the Memorandum of Law in support of such request.

II. Memorandum of Law in Support of Request for Confidentiality of Exhibit 1:

a. 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 a “redacted” or “public version” and an “unredacted” or “confidential” version of the document that contains confidential information. *Id.* at ¶ 6.

b. Grounds for Confidentiality

LUMA submits its response to RFI-LUMA-MI-2021-0004-20221220-PREB-001, sub-part (a), confidentially in accordance with the confidential nature of the December 20th conference during which the said RFI was issued. The present request for confidentiality is also consistent with a Resolution and Order entered by the Energy Bureau on January 10, 2023 in this proceeding, whereby it determined that LUMA’s Response to Request No. 13 (as that term is defined in the Resolution and Order) is confidential in nature as it includes information on salaries and description of the positions of certain LUMA employees (“January 10th Order”).

LUMA respectfully submits that the request for confidentiality is consistent with the Energy Bureau’s determination to hold the December 20th Technical Conference as a confidential hearing closed to the public precisely in consideration to the sensitive nature of the information to be discussed during the same. *See*, Resolution and Order dated November 28, 2022 (scheduling the confidential or closed Technical Conference to facilitate the review of confidential information submitted by LUMA in response to the Energy Bureau’s multiple RFIs issued in this proceeding). Insofar as the December 20th RFIs arose from the information discussed during the December 20th closed Technical Conference, it follows that, for the same reasons, the responses to such RFIs are confidential in nature.

It is respectfully submitted that the protection of the specific information produced in its response to RFI-LUMA-MI-2021-0004-20221220-PREB-001, sub-part (a) 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.

III. 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	Response to RFI-LUMA-MI-2021-0004-20221220-PREB-001, sub-part (a)	Response to its response to RFI-LUMA-MI-2021-0004-20221220-PREB-001, sub-part (a)	Information submitted confidentially consistent with the nature of the December 20 th closed technical conference and the January 10 th Order.	January 26 th , 2023

WHEREFORE, LUMA respectfully requests the Energy Bureau to **take notice** of the amended response to RFI-LUMA-MI-2021-0004-20221220-PREB-001, sub-part (a), **deem** the bench order issued during the December 20th closed Technical Conference complied with and **approve the request for confidential treatment** of its amended response to RFI-LUMA-MI-2021-0004-20221220-PREB-001, sub-part (a).

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 26th day of January 2023.

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 I
Amended Response to RFI-LUMA-MI-2021-0004-20221220-PREB-001
(submitted under seal of confidentiality)