

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

<b>NEPR</b>  <b>Received:</b>  Jan 19, 2023  11:48 PM
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**IN RE:**

REVIEW OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY'S 10-  
YEAR INFRASTRUCTURE PLAN-  
DECEMBER 2020

**CASE NO. NEPR-MI-2021-0002**

**SUBJECT: Motion to Substitute Exhibit Submitted to the Energy Bureau on May 20, 2022, Request Confidentiality of Portions of Such Exhibit, and to Submit Supporting Memorandum of Law**

**MOTION TO SUBSTITUTE EXHIBIT SUBMITTED TO THE ENERGY BUREAU ON MAY 20, 2022, REQUEST CONFIDENTIALITY OF PORTIONS OF SUCH EXHIBIT, AND TO SUBMIT SUPPORTING MEMORANDUM OF LAW**

**TO THE PUERTO RICO ENERGY BUREAU:**

COME NOW LUMA Energy, LLC<sup>1</sup>, and LUMA Energy ServCo, LLC<sup>2</sup>, (jointly referred to as “LUMA”), through the undersigned legal counsel and respectfully submit the following:

**I. Request to Substitute Exhibit**

1. On May 20, 2022, LUMA submitted to this Puerto Rico Energy Bureau (“Energy Bureau”) a scope of work (“SOW”) for a transmission and distribution project, pursuant to the Energy Bureau’s Resolution and Order of March 26, 2021. *See* LUMA’s *Motion Submitting Scope of Work and Updated List of Projects* (the “May 20<sup>th</sup> Motion”). Specifically, in the May 20<sup>th</sup> Motion, LUMA submitted the SOW for the following project as Exhibit 1: “Test and Technology Laboratory” (the “May 20<sup>th</sup> Exhibit 1”).

2. By inadvertence, the May 20<sup>th</sup> Exhibit 1 was submitted for the record in this proceeding in unredacted form. LUMA respectfully requests the Energy Bureau to remove from

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<sup>1</sup> Register No. 439372.

<sup>2</sup> Register No. 439373.

the record the May 20<sup>th</sup> Exhibit 1. Instead, LUMA is submitting a redacted version of the May 20<sup>th</sup> Exhibit 1 as Exhibit 1 hereto (“Exhibit 1”) to be uploaded in the docket in substitution of the May 20<sup>th</sup> Exhibit 1. *See* **Exhibit 1** included with this motion.

3. LUMA respectfully submits that portions of the SOW included in the May 20<sup>th</sup> Exhibit 1 are confidential for the reasons indicated in the memorandum of law included in this motion. Portions of the SOW include confidential information in the form of critical energy infrastructure information or critical electric infrastructure information (“CEII”) that garners protection from public disclosures pursuant to federal statutes and regulations, *see e.g.*, 6 U.S.C. §§ 671-674; 18 C.F.R. §388.113 (2020), and the Bureau’s Policy on Management of Confidential Information, *see* the Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009 (“Policy on Management of Confidential Information”), issued on August 31, 2016. *See* Section II below, wherein these portions and the basis for confidentiality are identified. The CEII pertains to safety systems and to vulnerabilities of critical system infrastructure that, if disclosed, would expose the electric power grid to attacks to the detriment of the public interest.

4. In addition, the SOW includes personal identifying information of individuals who are LUMA staff or contractors protected under Puerto Rico’s legal framework on privacy emanating from the Puerto Rico Constitution and should also be protected pursuant to the Energy Bureau’s Policy on Management of Confidential Information.

## **II. Memorandum of Law in Support of Request for Confidentiality**

### **A. Applicable Laws and Regulations to Submit Information Confidentially Before the Energy Bureau**

5. 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 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.* §1054n(a).

6. Access to 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 non-confidential copy be furnished for public review.” *Id.* §1054n(c).

7. 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 in accordance with the Rules of Evidence of Puerto Rico.

8. Moreover, the Energy Bureau’s Policy on Management of 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.

9. The Energy Bureau’s Policy on Management of Confidential Information states the following with regard to access to validated Trade Secret Information and CEII:

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 [Energy Bureau], unless otherwise set forth by the [Energy Bureau] or any competent court.

2. Critical Energy Infrastructure Information (“CEII”)

The information designated by the [Energy Bureau] as Validated Confidential Information on the grounds of being CEII may be accessed by the parties’ authorized representatives only after they have executed and delivered the Nondisclosure Agreement.

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.

*Id.* at § D (on Access to Validated Confidential Information).

10. Regulation No. 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings*, also includes a provision for filing confidential information in proceedings before this 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 according to [...] Article 6.15 of Act No. 57-2015, as amended.” *See also* Energy Bureau Regulation No. 9137 on *Performance Incentive Mechanisms*, § 1.13 (addressing disclosure before the Energy Bureau of Confidential Information and directing compliance with Resolution CEPR-MI-2016-0009).

#### **B. Request for Confidentiality**

11. The SOW included in the May 20<sup>th</sup> Exhibit 1 contains portions of CEII that, under relevant federal law and regulations, are protected from public disclosure. LUMA stresses that this information warrants confidential treatment to protect critical infrastructure from threats that could undermine the system and negatively affect electric power services to the detriment of the interests of the public, customers, and citizens of Puerto Rico. In several proceedings, this Energy Bureau has considered and granted requests by PREPA to submit CEII under seal of confidentiality.<sup>3</sup> In at

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<sup>3</sup> *See e.g., In re Review of LUMA's System Operation Principles*, NEPR-MI-2021-0001 (Resolution and Order of May 3, 2021); *In re Review of the Puerto Rico Power Authority's System Remediation Plan*, NEPR-MI-2020-0019 (order of April 23, 2021); *In re Review of LUMA's Initial Budgets*, NEPR-MI-2021-0004 (order of April 21, 2021); *In re Implementation of Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, NEPR MI 2020-0012 (Resolution of January 7, 2021, granting partial confidential designation of information submitted by PREPA as CEII); *In re Optimization Proceeding of Minigrad Transmission and Distribution Investments*, NEPR MI 2020-0016 (where PREPA filed documents under seal of confidentiality invoking, among others, that a filing included

least two proceedings on Data Security,<sup>4</sup> and Physical Security,<sup>5</sup> this Energy Bureau, *motu proprio*, has conducted proceedings confidentially, thereby recognizing the need to protect CEII from public disclosure.

12. Additionally, this Energy Bureau has granted requests by LUMA to protect CEII in connection with LUMA's System Operation Principles. *See* Resolution and Order of May 3, 2021, table 2 on page 4, Case No. NEPR-MI-2021-0001 (granting protection to CEII included in LUMA's Responses to Requests for Information). Similarly, in the proceedings on LUMA's proposed Initial Budgets and System Remediation Plan, this Energy Bureau granted confidential designation to several portions of LUMA's Initial Budgets and Responses to Requests for Information. *See* Resolution and Order of April 22, 2021, on Initial Budgets, table 2 on pages 3-4, and Resolution and Order of April 22, 2021, on Responses to Requests for Information, table 2 on pages 8-10, Case No. NEPR-MI-2021-0004; Resolution and Order of April 23, 2021, on Confidential Designation of Portions of LUMA's System Remediation Plan, table 2 on page 5, and Resolution and Order of May 6, 2021, on Confidential Designation of Portions of LUMA's Responses to Requests for Information on System Remediation Plan, table 2 at pages 7-9, Case No. NEPR-MI-2020-0019.

13. As mentioned above, the Energy Bureau's Policy on Management of Confidential Information provides for the management of CEII. It directs that the parties' authorized

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confidential information and CEII); *In re Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, CEPR-AP-2018-0001 (Resolution and Order of July 3, 2019 granting confidential designated and request made by PREPA that included trade secrets and CEII) *but see* Resolution and Order of February 12, 2021 reversing in part, grant of confidential designation).

<sup>4</sup> *In re Review of the Puerto Rico Electric Power Authority Data Security Plan*, NEPR-MI-2020-0017.

<sup>5</sup> *In re Review of the Puerto Rico Electric Power Authority Physical Security Plan*, NEPR-MI-2020-0018.

representatives access information validated as CEII only after executing and delivering a Non-Disclosure Agreement.

14. Generally, CEII or critical infrastructure information is exempted from public disclosure because it involves assets and information which pose public security, economic, health, and safety risks. Federal Regulations on CEII, particularly, 18 C.F.R. § 388.113, state that:

Critical energy infrastructure information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

- (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
- (ii) Could be useful to a person in planning an attack on critical infrastructure;
- (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and
- (iv) Does not simply give the general location of the critical infrastructure.

*Id.*

15. Additionally, “[c]ritical electric infrastructure means a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters. *Id.* Finally, “[c]ritical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.” *Id.*

16. The Critical Infrastructure Information Act of 2002, 6 U.S.C. §§ 671-674 (2020), part of the Homeland Security Act of 2002, protects critical infrastructure information (“CII”).<sup>6</sup>

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<sup>6</sup> Regarding protection of voluntary disclosures of critical infrastructure information, 6 U.S.C. § 673, provides in pertinent part, that CII:

CII is defined as “information not customarily in the public domain and related to the security of critical infrastructure or protected systems [...]” 6 U.S.C. § 671 (3).<sup>7</sup>

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- (A) shall be exempt from disclosure under the Freedom of Information Act;
  - (B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision-making official;
  - (C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;
  - (D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this part, except—
    - (i) in furtherance of an investigation or the prosecution of a criminal act; or
    - (ii) when disclosure of the information would be--
      - (I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or
      - (II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the Government Accountability Office
  - (E) shall not, be provided to a State or local government or government agency; of information or records;
    - (i) be made available pursuant to any State or local law requiring disclosure of information or records;
    - (ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or
    - (iii) be used other than for the purpose of protecting critical Infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act.
  - (F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

<sup>7</sup> CII includes the following types of information:

- (A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;
- (B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or
- (C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, construction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.



17. The SOW in the May 20<sup>th</sup> Exhibit 1 is for the development of a new central facility for pre-commissioning, testing and validation of high-voltage distribution apparatus; these types of testing facilities are an essential part of any electrical power grid. The following information in the SOW in the May 20<sup>th</sup> Exhibit 1 qualifies as CEII: the express coordinates to power transmission and distribution facilities (that is, the laboratory and testing facility), the identification of the specific building and the area within such building where these facilities will be located, and the specific design information in the form of a site plan of this central testing facility (18 C.F.R. § 388.113(iv)). This information could potentially be helpful to a person planning an attack on the energy facilities listed as part of this SOW. The information identified as confidential in this paragraph is not common knowledge and is not made publicly available. Therefore, it is respectfully submitted that, on balance, the public interest in protecting CEII weighs in favor of protecting the relevant portions of the SOW in the May 20<sup>th</sup> Exhibit 1 from disclosure, given the nature and scope of the details included in those portions of the Exhibit.

18. Based on the above, LUMA respectfully submits that the SOW should be designated as CEII. This designation is a reasonable and necessary measure to protect the specific location and design information of the energy facilities listed or discussed in this SOW in the May 20<sup>th</sup> Exhibit 1. Given the importance of ensuring the safe and efficient operation of the generation assets and the T&D System, LUMA respectfully submits that these materials constitute CEII that should be maintained confidentially to safeguard their integrity and protect them from external threats.

19. In addition, the SOW in the May 20<sup>th</sup> Exhibit 1 contains the name, signature, and role of an individual who is a LUMA employee and a contractor, respectively, who reviewed the

SOW as part of LUMA's internal review and approval of each document. LUMA respectfully requests that information on the names, signatures, and roles of these individuals be maintained confidentially in the context that these reveal details of their employment duties and that their protection is in the public interest and aligned with Puerto Rico's legal framework on privacy which protects from the disclosure of personal information. *See, e.g.*, Const. ELA, Art. II, Sections 8 and 10, which protect the right to control personal information and distinctive traits, which applies *ex proprio vigore* and against private parties. *See also e.g. Vigoreaux v. Quiznos*, 173 D.P.R. 254, 262 (2008); *Bonilla Medina v. P.N.P.*, 140 D.P.R. 294, 310-11 (1996), *Pueblo v. Torres Albertorio*, 115 D.P.R. 128, 133-34 (1984). *See also* Act 122-2019, Article 4(vi) (which provides, as an exception to the rule on public disclosure, information the disclosure of which could invade the privacy of third parties or affect their fundamental rights); and Article 3(c) of Act 122-2019 (stating that personnel files and similar information does not constitute public information subject to disclosure). It is respectfully submitted that the redaction of the aforementioned information does not affect the public's or the Energy Bureau's review of the SOW nor interfere with processes before this Energy Bureau. Therefore, on balance, the public interest to protect privacy weighs in favor of protecting the relevant portions of the SOW.

### **C. Identification of Confidential Information**

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

<b>Document</b>	<b>Name</b>	<b>Pages in which Confidential Information is Found, if applicable</b>	<b>Summary of Legal Basis for Confidentiality Protection, if applicable</b>	<b>Date Filed</b>
Exhibit 1	Test and Technology Laboratory	Page 1 (Grant Manager's Name and Signature and the Department VP's Name and Signature in the table at the bottom of this page)	Right to privacy ( <i>see, e.g.</i> , Const. ELA, Art. II, Sections 8 and 10)	Unredacted: May 20, 2022  Redacted form: January 19, 2023
		Page 3 (name of the building in the line where the page number for Figure 1 is provided in the Contents table)	Critical Energy Infrastructure Information, 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674.	Unredacted: May 20, 2022 Redacted form: January 19, 2023
		Page 5 (name of the building and GPS coordinates in the table on the top of this page, entire Figure 1, and name of the building and area within the building included in the label of Figure 1)	Critical Energy Infrastructure Information, 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674.	Unredacted: May 20, 2022  Redacted form: January 19, 2023
		Page 6 (name of the building in the first full sentence of this page)	Critical Energy Infrastructure Information, 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674.	Unredacted: May 20, 2022  Redacted form: January 19, 2023

Document	Name	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
		Page 13 (name of the building in the third sentence within the second box in this page)	Critical Energy Infrastructure Information, 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674.	Unredacted: May 20, 2022  Redacted form: January 19, 2023

**WHEREFORE**, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned; **accept** the redacted copy of the SOW attached herein as **Exhibit 1** in substitution, and as the public version of, May 20<sup>th</sup> Exhibit 1; and **grant** the request for confidential treatment of the May 20<sup>th</sup> Exhibit 1.

**RESPECTFULLY SUBMITTED.**

We hereby certify that we filed this motion using the electronic filing system of this Energy Bureau. We will send an electronic copy of this motion to the attorneys for PREPA, Joannely Marrero-Cruz, jmarrero@diazvaz.law, and Katuska Bolaños-Lugo, kbolanos@diazvaz.law.

In San Juan, Puerto Rico, on this 19<sup>th</sup> day of January 2023.



**DLA Piper (Puerto Rico) LLC**  
500 Calle de la Tanca, Suite 401

San Juan, PR 00901-1969  
Tel. 787-945-9132  
Fax 939-697-6102

*/s/ Yahaira De la Rosa Algarín*  
Yahaira De la Rosa Algarín  
RUA NÚM. 18,061  
[yahaira.delarosa@us.dlapiper.com](mailto:yahaira.delarosa@us.dlapiper.com)

*/s/ Laura T. Rozas*  
Laura T. Rozas  
RUA Núm. 10,398  
[laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com)

Exhibit 1

*Redacted version of the May 20<sup>th</sup> Exhibit 1*