

**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: Motion Submitting Update on IRP
Technical Consultant Contracting Process, Request for
Modification of Procedural Timeline and Request for
Confidential Treatment**

**MOTION SUBMITTING UPDATE ON IRP TECHNICAL CONSULTANT
CONTRACTING PROCESS, REQUEST FOR MODIFICATION OF PROCEDURAL
TIMELINE AND REQUEST FOR CONFIDENTIAL TREATMENT**

TO THE PUERTO RICO ENERGY BUREAU:

COMES NOW LUMA Energy ServCo, LLC (“LUMA”), through the undersigned legal counsel, and respectfully states and requests the following:

I. Factual and Procedural Background

1. On November 5, 2021, LUMA informed this Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) of the status of LUMA’s efforts to prepare for the next cycle of the Integrated Resource Plan (“IRP”) and the first submittal required under Section V(B)(2) of the Final Resolution and order of August 24, 2020 in Case CEPR-AP-2018-0001, *In Re: Puerto Rico Electric Power Authority Integrated Resource Plan*, in which the Energy Bureau approved in part and rejected in part PREPA’s IRP and established a modified action plan (the “August 24th Order”). *See Informative Motion on Timeline to Submit Report on Resource Planning Process for Next IRP Cycle and Draft RFQ and RFP for IRP Consultant and Request for Additional Time* of that date. Section V(B)(2) of the August 24th Order requires PREPA to

comply with specific requirements relating to the procurement and selection of the technical consultant to be engaged by PREPA for IRP-related services for the next IRP cycle (the “IRP Technical Consultant”), including, as an initial step, submittal to the Energy Bureau of the proposed Request for Qualifications (“RFQ”) for the procurement.

2. On November 30, 2021, LUMA further informed the Energy Bureau of the status of the proposed RFQ and Request for Proposals (“RFP”) for the procurement of the IRP Technical Consultant and requested until December 17, 2021 to submit drafts of these documents to the Energy Bureau. *See Informative Motion on Timeline to Submit Report on Resource Planning Process for Next IRP Cycle and Draft RFQ and RFP for IRP Consultant and Request for Additional Time* of that date.

3. On December 17, 2021, LUMA filed, with a request for confidential treatment, the proposed RFQ, RFP and first draft of the contract for the procurement (together, the “RFQ/RFP Package”) of the IRP Technical Consultant for the Energy Bureau’s approval in attention to Section V(B)(2) of the August 24th Order. *See Exhibit 3 of Motion to Submit Report on Resource Planning Process for Next IRP Cycle and Draft RFQ/RFP for IRP Consultant and Request for Confidential Treatment* of that date (“December 17th Motion”). In the December 17th Motion, LUMA also requested the Energy Bureau to approve a proposed streamlined contracting process for the IRP Technical Consultant (the “Streamlined IRP Consultant Contracting Process”). *See December 17th Motion* at pages 2-6.

4. After other procedural events, on April 22, 2022, the Energy Bureau issued a Resolution and Order (the “April 22nd Order”) approving “the requests of LUMA to streamline the contracting process for an IRP Technical Consultant” (i.e., the Streamlined IRP Consultant Contracting Process; now, “Approved IRP Consultant Contracting Process”) and “LUMA’s use of

a draft RFQ/RFP/contract form” (i.e., the RFQ/RFP Package) (*see* April 22nd Order at page 5) and granted confidential treatment designation to the RFQ/RFP Package (*see id.* at page 6). In addition, the Energy Bureau directed LUMA to “file status updates on the technical consultant contracting process and the early stages of IRP preparation on July 1, 2022, and October 1[,] 2022”. *See id.* at page 5. With respect to the IRP, the Energy Bureau determined that the IRP (referred to as the 2024 IRP) is to be filed no later than March 1, 2024 and indicated that it anticipated scheduling an initial technical conference in March 2023 “to gather information regarding the methodologies and contents contemplated by LUMA for its 2024 IRP”. *See id.* at page 4.

5. On July 1, 2022, LUMA submitted the first status update required under the April 22nd Order informing the Energy Bureau of the issuance of the RFQ/RFP for the IRP Technical Consultant and the schedule of milestones in the Approved IRP Consultant Contracting Process. *See Motion to Submit Status Update on Technical Consultant Contracting Process and Early Stages of 2024 IRP Preparation in Compliance with Energy Bureau Resolution and Order of April 22, 2022* of that date.

6. On August 31, 2022, LUMA submitted to this Energy Bureau a list of the proponents who submitted complete proposals and met the qualification requirements of the RFQ/RFP Package (“Qualified Proponents”), the determination made by LUMA as to which one of the qualified proponents best met the scope of services and commercial terms of the RFQ/RFP Package (“Selected Proponent”) and the supporting documentation and requested confidential treatment of these documents. *See Motion to Submit List of Qualified Proponents for IRP Consultant Procurement and Related Information and Request for Confidentiality* of that date (“August 31st Motion”).

7. On October 3, 2022, LUMA filed with the Energy Bureau the second and last status update required by, and in compliance with, the April 22nd Order on the Approved IRP Consultant Contracting Process and the initial stages of the IRP preparation as of that date. As Exhibit 1 to its October 3rd Motion, LUMA included a document entitled 2024 Integrated Resource Plan Status Report (“Second IRP Status Report”) summarizing the status of the key milestones involved in the preparation of the IRP and the Approved IRP Consultant Contracting Process.

8. With regards to the contracting of the IRP Technical Consultant, LUMA informed that it expected to finalize and execute the contract by late October 2022.

9. On October 14, 2022, the Energy Bureau issued a Resolution and Order (“October 14th Order”) approving LUMA’s choice of the Selected Proponent “contingent upon the ultimate contract with the preferred contractor explicitly stating that the contractor will comply with the Energy Bureau's Regulations concerning the filing of an integrated resource plan”. *See* October 14th Order at page 2.¹

II. Update on Status of IRP Technical Consultant Contracting Process

10. It is respectfully informed that soon after the entry of the October 14th Order, LUMA took steps to begin negotiating the proposed contract with the Selected Proponent. As part of that process, LUMA has been working with the Selected Proponent to finalize contract in compliance with the Procurement Manual and PREB’s applicable Order and regulations.

11. To that end, LUMA respectfully requests that the Energy Bureau take notice of the information included in the IRP Consultant Contracting Process Status Report included as *Exhibit I* herein. As described in *Exhibit I*, the process to contract the IRP Technical Consultant has been delayed, resulting in delays in associated tasks. LUMA has updated the timeline established in the

¹ The October 14th Order included other directives relating to the IRP development and process.

Second IRP Status Report to reflect revised estimated timelines for filing of the draft contract with the Selected Proponent for the Energy Bureau’s approval (now estimated at April, 2023), obtaining the Energy Bureau’s approval of the final contract and execution thereof (now estimated at April, 2023), mobilization of the 2024 IRP (now estimated as May 2023-February 2024). The updated IRP Status Report with the revised and updated timeline is submitted as *Exhibit 2* herein. The updated IRP Status Report also contains an updated summary of key activities.

12. LUMA respectfully requests that the Energy Bureau consider moving the date for the initial technical conference to no earlier than May 2023, or after the Energy Bureau's approval of the final contract for execution, to provide sufficient time for LUMA to be able to complete the Approved IRP Consultant Contracting Process before the technical conference so that it is able to attend this initial conference with the IRP Technical Consultant onboard.

13. LUMA respectfully informs that it understands that the modified timeline would not impact the date for filing the 2024 IRP which as per the April 22nd Order is set for March 1, 2024.

14. LUMA submits *Exhibit 1* under seal of confidentiality, and requests, pursuant to the Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, as amended by the Resolution dated September 20, 2016 (together, “Policy on Confidential Information”), that the Energy Bureau keep and maintain *Exhibit 1* confidential. LUMA provides below the Memorandum of Law in support of this request.

III. Memorandum of Law in Support of Request for Confidential Treatment

A. Applicable Laws and Regulations

15. The bedrock provision on management of confidential information that is filed before this 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 [now Energy Bureau] 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 the 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), 22 LPRA §1054n(a).

16. Relatedly, in connection with the duties of electric power service companies, Section 1.10 (i) of Act 17-2019 provides that an electric power service company shall “provide documents and information as requested by customers, except for: ... confidential information in accordance with the Rules of Evidence of Puerto Rico” and “matters it must maintain in confidence pursuant to a confidentiality agreement, so long as such agreement is not contrary to the public interest...”, among others. 22 LPRA §1141i(i).

17. Per Act 57-2014, 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), 22 LPRA §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.*, Section 6.15(c), 22 LPRA §1054n(c).

18. 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, the referenced 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* 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 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 "redacted" or "public version" and an "unredacted" or "confidential" version of the document that contains confidential information. *Id.*, paragraph 6.

B. Request for Confidential Treatment

19. It is respectfully submitted that the document identified as Exhibit 1 included herein is confidential because it describes certain developments related to the procurement and contracting of the Selected Proponent. As mentioned, Exhibit 1 includes a description of a situation that arose when LUMA was in the process of beginning negotiations with the Selected Proponent and the steps taken by LUMA to address such situation as per its Procurement Manual. LUMA maintains these types of documents and has maintained Exhibit 1 in confidence to protect the purity of its competitive procurement processes. Disclosure of any of the above information could adversely affect the financial, competitive, or bargaining position of LUMA.

20. Furthermore, LUMA is required to keep the documents in Exhibit 1 herein confidential as per the terms of the RFQ/RFP Package, which was approved by the Energy Bureau.

The RFP/RFQ Package provides that LUMA's report on the procurement and selection process will be made public upon completion of the RFP process, with certain restrictions on the publication of trade secrets, proprietary information and privileged information of the proponents established therein. *See* December 17th Motion, Exhibit 3, Section 14. Pursuant to this provision, the confidentiality of these documents is appropriately limited to the time period during which the procurement process is ongoing. Therefore, LUMA respectfully submits that the protection requested for Exhibit 1 herein is proposed in a manner that least affects the public interest, transparency, and the rights of the parties involved and this proceeding.

21. It bears noting that this Energy Bureau grants confidential treatment to proposals received by PREPA during the evaluation and selection period, *as well as the associated administrative record*, in connection with RFPs conducted pursuant to the *Joint Regulation 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 No. 8815 ("Joint Regulation 8815") (see Joint Regulation, Section 4.8(g)). Although the IRP Consultant Contracting Process is not ruled by Joint Regulation 8815, it is respectfully submitted that the confidentiality concerns that apply to communications between this Energy Bureau and PREPA related to the proposal evaluation and selection process under Joint Regulation 8815, are also present in the submissions made by LUMA to this Energy Bureau relating to the evaluation and selection process in the competitive procurement process for the IRP Technical Consultant.

22. In sum, Exhibit 1 contains detailed information pertaining to a competitive procurement process that is **not common knowledge or readily accessible** by third parties while the procurement process is ongoing, the disclosure of which may affect the integrity or purity of a

competitive procurement. Reasonable measures have been taken to protect the document included as Exhibit 1 to safeguard this Energy Bureau’s authority. Therefore, the public interest is best served if this Energy Bureau keeps and maintains Exhibit 1 confidentially in its entirety and pursuant to the Energy Bureau’s Policy on Confidential Information. *See* CEPR-MI-2016-0009, as amended by the Resolution of September 16, 2016, CEPR-MI-2016-0009.

23. In compliance with the Policy on Confidential Information, a table summarizing the hallmarks of this request for confidential treatment is provided below.

Document	Date of Submission	Where Confidential Information is Found (Identification of Documents)	Legal Provisions and Summary of Legal Basis for Confidentiality Protection, if applicable
Exhibit 1	March 31, 2023		<p>Section 6.15 of Act 57-2014 and Section 1.10(i) of Act 17-2019</p> <p>Document that has not been disclosed to protect the integrity of a competitive procurement process, and that is also subject to confidentiality restrictions pursuant to the terms of the RFQ/RFP Package approved by the Energy Bureau in the April 22nd Resolution.</p>

WHEREFORE, LUMA respectfully requests the Energy Bureau to **take notice** of the aforementioned, **consider** scheduling the initial technical conference related to the IRP no earlier than May 2023, and **grant** the request for confidential treatment of *Exhibit 1* herein.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 31st day of March 2023.

We hereby certify that we filed this notice and request using the electronic filing system of this Puerto Rico Energy Bureau and that courtesy copy of this notice and request was notified to PREPA counsel mvazquez@diazvaz.law and jmarrero@diazvazlaw.com.



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Exhibit 1 (Confidential)

IRP Consultant Contracting Process Status Report

[Submitted under Seal]

Exhibit 2

Updated IRP Status Report

2024 IRP Status Update

G On target **Y** Caution **R** Off plan **C** Complete

Key Activity Summary
<ul style="list-style-type: none"> Identified a Preferred Bidder for 2024 IRP Technical Consultant and filed to Energy Bureau for approval. Worked towards resolving potential contracting issue with Technical Consultant Preferred Proponent. Issued Stakeholder Facilitator RFP to manage stakeholder engagement process. Continued to meet, share data, and provide technical guidance to US DOE PR100 team. Completed multiple studies and analysis. Compiling historic and forecasted data from PREPA, LUMA and other organizations .

Key Milestones	Date	Status
Filed draft RFQ/RFP and contract with Energy Bureau	December 2021	C
Issued RFQ/RFP	May 2022	C
Filed list of Qualified Proponents with Energy Bureau for approval	August 2022	C
File report and negotiated final draft contract with Preferred Bidder with Energy Bureau for approval	April 2023	R
Energy Bureau approval of final contract and execution of contract	April 2023	R
Develop 2024 IRP (date modified based on April 22nd R&O)	May 2023 -Feb. 2024	Y
2024 IRP Initial Technical Conference	May 2023	Y
File 2024 IRP with Energy Bureau (due date modified based on April 22nd R&O)	March 1, 2024	Y

Risks / Issues:
<ul style="list-style-type: none"> Market Baseline and Potential Studies for EE and DR will not be completed in time for use by PR100 or 2024 IRP. Estimates and assumptions will be required where system and market data are not available. Technical consultant contract execution behind schedule and could affect 2024 IRP timeline.