

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

**NEPR**

**Received:**

**Jun 5, 2023**

**4:33 PM**

IN RE: REVIEW OF LUMA'S  
INITIAL BUDGETS

CASE NO. NEPR-MI-2021-0004

**SUBJECT: Memorandum of Law in Support  
of Request for Confidential Treatment for  
Supporting Workpapers to LUMA's  
Proposed Annual T&D Budgets for FY 2024**

**MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL  
TREATMENT OF SUPPORTING WORKPAPERS TO LUMA'S PROPOSED ANNUAL  
TRANSMISSION AND DISTRIBUTION BUDGETS ("PROPOSED ANNUAL T&D  
BUDGETS") FOR FY2024**

**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. Introduction**

On May 16, 2023, LUMA filed before this honorable Puerto Rico Energy Bureau ("Energy Bureau"), its Proposed Annual T&D Budgets. On May 23, 2023, this Honorable Energy Bureau issued a Resolution and Order with the subject Second Requirement of Information ("ROI") – Review of LUMA's Proposed Consolidated FY 2024 Budgets ("May 23<sup>rd</sup> Order"). In what pertains to this Memorandum, this Energy Bureau directed that LUMA, GENERA and PREPA shall submit their "workpapers and supporting materials used to develop their respective FY 2024 Budget Proposal."

In compliance with the May 23<sup>rd</sup> Order, LUMA submitted the supporting workpapers to the Proposed Annual T&D Budgets. *See Motion in Compliance with Resolution and Order of May 23, 2024 and Submitting Supporting Workpapers*, filed on May 26, 2023 ("May 26<sup>th</sup> Motion

Submitting Workpapers”). As identified in the table below, LUMA submitted under seal of confidentiality, the workpaper RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 1\_Operating Expenditures.xlsx, and one tab found in the workpaper RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 2\_Capital Expenditures.xlsx and identified that the spreadsheets included sensitive commercial information and trade secrets. LUMA also submitted public redacted versions of each spreadsheet.

Supporting Workpapers Identification of Confidential Information	Summary of Legal Basis for Confidentiality Protection
RFI-LUMA-MI-2021-0004-20230523-PREB-001 Attachment 1_Operating Expenditures.xlsx	Sensitive Commercial Information and Trade Secrets under Act 80-2011
RFI-LUMA-MI-2021-0004-20230523-PREB-001 Attachment 2_Capital Expenditures.xlsx <b>Prioritization tab</b>	Sensitive Commercial Information and Trade Secrets under Act 80-2011

In the May 26<sup>th</sup> Motion Submitting Workpapers LUMA also informed that, in compliance with the Energy Bureau’s Policy on Management of Confidential Information,” CEPR-MI-2016-0009, issued on August 31, 2016, as amended on September 21, 2016 (“Energy Bureau’s Policy on Management of Confidential Information”), under separate cover and expediently, within the next ten days, it would submit a memorandum of law in support of its request to file RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 1\_Operating Expenditures.xlsx, and one tab found in the workpaper RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 2\_Capital Expenditures.xlsx, under seal of confidentiality.

In compliance with the Energy Bureau’s Policy on Management of Confidential Information, LUMA submits this memorandum of law that identifies and explains the legal basis for the confidential treatment of portions of the supporting workpapers that were filed with this

Energy Bureau with the May 26<sup>th</sup> Motion Submitting Workpapers. It is respectfully submitted that the portions of the workpapers that have been identified as confidential, should be protected per Article 6.15 of Law 57-2014, known as the Puerto Rico Energy Transformation and Relief Act and the Energy Bureau's Policy on Management of Confidential Information. In furtherance of Act 57-2014's mandate that documents submitted before the Energy Bureau should be kept out of public reach only in exceptional circumstances, LUMA's request for confidential designation of portions of the workpapers that were filed with the May 26<sup>th</sup> Motion Submitting Workpapers, is narrowly tailored to specifically protect the information that has been identified as confidential. LUMA is committed to enrich this proceeding with transparency and to enable the Energy Bureau, interested stakeholders, and customers, to fully evaluate and consider the Proposed Annual T&D Budgets.

## **II. Applicable Laws and Regulation to submit information confidentially before the Energy Bureau.**

Section 6.15 of Act 57-2014 regulates the management of confidential information filed before this Bureau. 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 Commission to treat such information as such . . . .” 22 LPRC §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.*, Section 6.15 (a).

In connection with the duties of electric power service companies, Sections 1.10 (i) and (ix) of Act 17-2019 further provide that electric power service companies shall submit information requested by customers, except for: (i) confidential information in accordance with the Rules of

Evidence of Puerto Rico; [...]; and (ix) matters of public security involving threats against PREPA, its property or employees. 22 LPRA §1141i.

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. 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).

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 Energy Bureau’s Policy on Confidential Information 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 16, 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.

The Energy Bureau's Policy on Confidential Information also states the following with regards to 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.

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

Relatedly, Energy Bureau Regulation No. 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings*, includes a provision for filing confidential information in adjudicatory proceedings before this honorable Bureau. To wit, Section 1.15 provides that, "a person has the duty to disclose information to the [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 [Bureau] shall evaluate the petition and, if it understands [that] the material merits protection, proceed accordingly to . . . Article 6.15 of Act No. 57-2015, as amended." *See also* Energy Bureau Regulation No. 9137 on *Performance Incentive Mechanisms*, Section 1.13 (addressing disclosure before the Energy Bureau of Confidential Information and directing compliance with Resolution CEPR-MI-2016-0009).

### **III. Request for Confidentiality and Supporting Arguments: Sensitive Commercial Information**

Under the Industrial and Trade Secret Protection Act of Puerto Rico, Act 80-2011, 10 LPRA §§ 4131-4144, 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. (Emphasis added).

Trade secrets 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. As explained in the Statement of Motives of Act 80-2011, protected trade secrets include any information bearing commercial or industrial value that the owner reasonably protects from disclosure. *Id.* *See also* Article 4 of Puerto Rico's Open Data Law, Act 122-2019 (exempting the following from public disclosure: (1) commercial or financial information whose disclosure will cause competitive harm; (2) trade secrets protected by a contract, statute or judicial decision (3) private information of third parties). *See* Act 122-2019, Articles 4 (ix) and (x) and (xi)), 3 LPRA §9894.

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); *see also Next Step Medical Co. v. MCS Advantage Inc.*, KLCE201601116, 2016 WL 6520173 (P.R. Court of Appeals, September 13, 2016 at page 11) (holding that in Puerto Rico, what constitutes trade secrets is evaluated applying a broad definition). A trade secret includes ***any and all information*** from which a real or potential value or economic advantage may be derived; that is not common knowledge or accessible through other means; and as to which reasonable security measures have been adopted to keep the information confidential. *Ponce Adv. Medical*, 197 DPR at 906.

The workpaper RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 1\_Operating Expenditures, and one tab found in the workpaper RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 2\_Capital Expenditures (Program Prioritization), filed with the May 26<sup>th</sup> Motion Submitting Workpapers, include sensitive commercial information on estimated expenditures, program resources requirements, and estimations and assumptions on costs, that LUMA has not shared with third parties and maintains confidentially. The commercially sensitive and confidential information includes LUMA original supporting work papers and work product with estimations, methods and assumptions on allocations of costs for operational, and capital expenditures and improvement programs and information on expenditure categories by year. The information should be kept confidential to secure the orderly conduct of future acquisitions and competitive procurement processes. Disclosure of the information will stifle future competitive processes and potentially increase costs since bidders and suppliers will have had the benefit of seeing LUMA's estimates, original analysis and work product on proposed budgets for the acquisition of these goods and services. Also, the confidential portions of the workpapers constitute LUMA's original work product which LUMA does not share publicly with third parties to protect the orderly conduct of its business.

LUMA requests that the workpaper RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 1\_Operating Expenditures, and one tab found in the workpaper RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 2\_Capital Expenditures (Program Prioritization), filed with the May 26<sup>th</sup> Motion Submitting Workpapers, be maintained under seal of confidentiality before this Energy Bureau as they contain sensitive commercial information whose premature disclosure would also contravene public policy on competitive procurement processes and will impede efficient allocation of PREPA funds that have been earmarked in the T&D Annual Budgets

for FY2024 to be invested in programs that will be funded over the next three years to deliver value to customers in accordance with policy and contractual requirements and within annual budget constraints.

It is important to note that in a Resolution and Order of April 21, 2021, with the subject *Request to Submit Portions of LUMA's Responses to Requests for Information Confidentially, and Memorandum of Law in Support Thereof* ("April 21<sup>st</sup> Order"), this Energy Bureau granted confidential treatment to two attachments filed in connection with LUMA's Initial Budgets that contain similar information to that found in in attachments to LUMA's Responses to the May 23<sup>rd</sup> Order, RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 1\_Operating Expenditures, and RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 2\_Capital Expenditures. *See* April 21<sup>st</sup> Order at page 10 (granting confidential treatment to RFI-LUMA- MI-21-0004- 210405-PREB- 009 Attachment 1 and RFI-LUMA- MI-21-0004- 210405-PREB- 009 Attachment 2). Also, this Energy Bureau has maintained confidentially, LUMA's workpapers submitted on April 8, 2022, in connection with LUMA's Annual Budgets for FY2023 that contain similar information to that found in the workpaper entitled RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 1\_Operating Expenditures, and one tab found in the workpaper RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 2\_Capital Expenditures (Program Prioritization), filed with the May 26<sup>th</sup> Motion Submitting Workpapers. *See Motion in Compliance with Resolution and Order of March 25, 2022, and Request for Confidential Treatment*, at page 3 ("LUMA's April 2022 Confidential Filing").

LUMA hereby requests that this Energy Bureau apply to the workpaper RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 1\_Operating Expenditures, and one tab found in the workpaper RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 2\_Capital Expenditures



(Program Prioritization), filed with the May 26<sup>th</sup> Motion Submitting Workpapers, the same ruling and designation of confidentiality that this Energy Bureau applied in the April 21<sup>st</sup> Order and to LUMA's April 2022 Confidential Filing. The confidential portions of the workpapers that were submitted with the May 26<sup>th</sup> Motion Submitting Workpapers, contain sensitive commercial information regarding LUMA's estimating methods and assumptions.

**WHEREFORE**, LUMA respectfully requests this Honorable Bureau **grant** LUMA's request for confidential treatment of the workpaper RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 1\_Operating Expenditures, and one tab found in the workpaper RFI-LUMA-MI-2021-0004-20230523-PREB-000 Attachment 2\_Capital Expenditures (Program Prioritization), filed with the May 26<sup>th</sup> Motion Submitting Workpapers

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 5<sup>th</sup> day of June 2023.

I hereby certify that this motion was file using the electronic filing system of this Energy Bureau and that I will send an electronic copy of this motion to the attorneys for PREPA, Joannely Marrero-Cruz, [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law) and [mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law); and to Genera PR LLC, through counsels of record, Jorge Fernandez-Reboredo, [jfr@sbglaw.com](mailto:jfr@sbglaw.com) and Alejandro López Rodríguez, [alopez@sbglaw.com](mailto:alopez@sbglaw.com).



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