

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

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IN RE: REVIEW OF LUMA’S INITIAL
BUDGETS

CASE NO. NEPR-MI-2021-0004

**SUBJECT: Memorandum of Law in Support of
Confidential Treatment for Excel Files Submitted on
June 6, 2023 in Compliance of Resolution and Order
dated May 23, 2023**

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT FOR
EXCEL FILES SUBMITTED ON JUNE 6, 2023 IN COMPLIANCE OF RESOLUTION
AND ORDER DATED MAY 23, 2023**

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 submit the following in partial compliance with the Energy Bureau’s Resolution and Order dated May 23, 2023:

I. Introduction

On May 15, 2023, LUMA submitted to this Puerto Rico Energy Bureau (the “Energy Bureau”) the proposed Budgets for the Puerto Rico Energy System (the “System”), which are comprised of the proposed budget for the Transmission and Distribution System (“Proposed Annual T&D Budgets”), developed by LUMA; the budget proposal for the legacy thermal generation units (the “GenCo Budget”), the budget proposal for the hydroelectric generating units and the public irrigation facilities (the “HydroCo Budget”) and the budget proposal for PREPA and its subsidiaries other than GenCo and HydroCo (the, “HoldCo Budget”) (collectively referred to as the “System Annual Budgets”). *See Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Annual T&D Projections through Fiscal Year 2026* filed in this proceeding (“FY2024 Consolidated Budgets Submission”).

On May 23, 2023, after other procedural developments, the Energy Bureau issued a Resolution and Order (the “May 23rd Order”) whereby, in what is pertinent, determined that “additional information is required for its review of the Proposed Consolidated FY2024 Budgets.” *See*, the May 23rd Order at page 3. Consequently, the Energy Bureau ordered LUMA, Genera and PREPA (HydroCo and HoldCo) to respond, on or before June 2, 2023 at 12:00pm, to a Second Requirement for Information (the “Second RFI”) included as Attachment A and Attachment B to its May 23rd Order.¹

On June 2, 2023, LUMA filed an *Urgent Request for Extension of Time to Submit Responses in Compliance with Resolution and Order Dated May 23, 2023*, requesting a brief extension of time until June 6, 2023 at 12:00pm, to submit the responses to the Second RFI.

In compliance with the May 23rd Order, LUMA filed its Responses to the Second RFI on June 6, 2023. *See Submission in Compliance with Resolution and Order dated May 23, 2023*, filed on June 6, 2023 (“June 6th Motion”). As identified in the table below, LUMA submitted under seal of confidentiality two Excel spreadsheets identified as ROI-LUMA-MI-2021-0004-20230523-PREB-033 Attachment 1_Load forecast_values and ROI-LUMA-MI-2021-0004-20230523-PREB-033 Attachment 2_load forecast modifiers_values, which include sensitive commercial information and trade secrets. LUMA also submitted public redacted versions of each of those spreadsheets.

In the June 6th Motion, 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,

¹ Through the May 23rd Order, the Energy Bureau also directed that LUMA, GENERA and the Puerto Rico Electric Power Authority (“PREPA”) shall submit “within three (3) days from, all workpapers and supporting materials used to develop their respective FY 2024 Budget Proposals in native form with all formulas and links intact and any Excel spreadsheets provided unlocked.” On May 26, 2023, LUMA filed a *Motion in Compliance with Resolution and Order of May 23, 2023, and Submitting Supporting Workpapers* whereby it submitted the supporting workpapers of the Proposed Annual T&D Budgets in compliance with that portion of the May 23rd Order.

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 and maintain ROI-LUMA-MI-2021-0004-20230523-PREB-033 Attachment 1_Load forecast_values and ROI-LUMA-MI-2021-0004-20230523-PREB-033 Attachment 2_load forecast modifiers_values, under seal of confidentiality.

In compliance with the Energy Bureau’s Policy on Management of Confidential Information, LUMA hereby submits this memorandum of law that identifies and explains the legal basis for the confidential treatment of portions of the aforementioned spreadsheets that were filed with this Energy Bureau with the June 6th Motion. It is respectfully submitted that the relevant portions of the spreadsheets 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 spreadsheets that were filed with the June 6th Motion, is narrowly tailored to specifically protect the information that has been identified as confidential.

II. Request for Confidential Treatment of Excel Files and Supporting Memorandum of Law.

As will be discussed in detail below, the confidential Excel spreadsheets submitted in native format as part of LUMA’s responses to the Second RFI include formulae and original calculations made by LUMA personnel that reveal confidential procedures. They also encompass sensitive commercial information of a third party and include projections and modifiers that LUMA protects as confidential sensitive information.

A. 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 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.*, 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).

Also, the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“OMA”), recognizes in Section 13.2(a), that Operator Confidential Information includes, among others, Confidential Information pertaining Operator Intellectual Property. Operator Intellectual Property is defined by the OMA as any intellectual property owned by or licensed to Operator used in the performance of the O&M Services or in connection with the T&D System and is embedded in or otherwise necessary for the use of the Work Product. *See*, Section 13.1(a) of the OMA.

B. Request for Confidentiality

1. 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 Excel spreadsheets that were submitted on June 6, 2023, in native form and with formulae intact identified as ROI-LUMA-MI-2021-0004-20230523-PREB-033-

Attachment1loadforecase_confidential.xlsx and ROI-LUMA-MI-2021-0004-20230523-PREB-033Attachment 2_loadforecast modifiers_confidential.xlsx are protected as trade secrets because they have commercial value to LUMA and include confidential information provided by a third party --the Federal Oversight and Management Board (“FOMB”)-- on a confidential basis which LUMA is bound to protect. Specifically, the macros identified as “GNP” and “CDD” included in the spreadsheets constitute confidential information provided by the FOMB.

The spreadsheets also include long-term projections that LUMA maintains as confidential as they could impact ongoing processes for the acquisition of goods or services and modifiers that are protected as sensitive commercial information. The spreadsheets also reveal confidential processes and modifiers used to produce long term forecasts. As such, LUMA keeps and maintains these native files confidentially and does not disclose them to the public or unauthorized third parties.

LUMA appreciates the importance of placing the Energy Bureau in the position of reviewing the load forecasts. However, to avoid commercial harm if original format spreadsheets with formulae and calculations are publicly disclosed, LUMA respectfully requests that the Excel files submitted yesterday identified as ROI-LUMA-MI-2021-0004-20230523-PREB-033-Attachment1loadforecase_confidential.xlsx and ROI-LUMA-MI-2021-0004-20230523-PREB-033Attachment 2_loadforecast modifiers_confidential.xlsx be received, kept, and maintained confidentially by this Energy Bureau.

The confidential spreadsheets included as Exhibit are: (1) documents with commercial and financial value, (2) involve data that **is not common knowledge or readily accessible** by third parties who may seek to profit from the data or gain commercial advantages; (3) include confidential data of a third party, and (4) include projections that LUMA maintains as confidential. Therefore,

the spreadsheets are business documents showing processes, methods, and mechanisms that garner protection under Act 80-2011. They are original documents that have not been disclosed to third parties and which disclosure would reveal sensitive and private commercial processes employed by LUMA. The disclosure of this sensitive commercial information would place LUMA in vulnerable and disadvantageous commercial positions that could affect LUMA customers and impact rates. Reasonable measures have been taken to protect the files from disclosure and avoid unauthorized access by third parties that could seek to gain commercial advantages. It is respectfully submitted that Exhibit are trade secrets protected from public disclosure by Act 80-2011.

C. 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	Spreadsheet tab in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection, if applicable
ROI-LUMA-MI-2021-0004-20230523-PREB-033-Attachment1 loadforecase_confidential	DBASE Load Factor from 1992 to 2023	Trade Secret Information under Section D(1) of Energy Bureau’s Policy on Confidential Information, CEPR-MI-2016-0009
ROI-LUMA-MI-2021-0004-20230523-PREB-033-Attachment1 loadforecase_confidential	2023 Trends CHP/DG Adjustments	Trade Secret Information under Section D(1) of Energy Bureau’s Policy on Confidential Information, CEPR-MI-2016-0009

Attachment	Spreadsheet tab in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection, if applicable
ROI-LUMA-MI-2021-0004-20230523-PREB-033-Attachment1 loadforecast_confidential	Exogenous Variables Annual	Trade Secret Information under Section D(1) of Energy Bureau's Policy on Confidential Information, CEPR-MI-2016-0009
ROI-LUMA-MI-2021-0004-20230523-PREB-033-Attachment1 loadforecast_confidential	Exogenous Variables Monthly	Trade Secret Information under Section D(1) of Energy Bureau's Policy on Confidential Information, CEPR-MI-2016-0009
ROI-LUMA-MI-2021-0004-20230523-PREB-033-Attachment1 loadforecast_confidential	Monthly 2024	Trade Secret Information under Section D(1) of Energy Bureau's Policy on Confidential Information, CEPR-MI-2016-0009
ROI-LUMA-MI-2021-0004-20230523-PREB-033-Attachment1 loadforecast_confidential	Residential	Trade Secret Information under Section D(1) of Energy Bureau's Policy on Confidential Information, CEPR-MI-2016-0009

Attachment	Spreadsheet tab in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection, if applicable
ROI-LUMA-MI-2021-0004-20230523-PREB-033-Attachment1 loadforecase_confidential	Commercial	Trade Secret Information under Section D(1) of Energy Bureau's Policy on Confidential Information, CEPR-MI-2016-0009
ROI-LUMA-MI-2021-0004-20230523-PREB-033-Attachment1 loadforecase_confidential	Industrial	Trade Secret Information under Section D(1) of Energy Bureau's Policy on Confidential Information, CEPR-MI-2016-0009
ROI-LUMA-MI-2021-0004-20230523-PREB-033-Attachment1 loadforecase_confidential	Yearly	Trade Secret Information under Section D(1) of Energy Bureau's Policy on Confidential Information, CEPR-MI-2016-0009
ROI-LUMA-MI-2021-0004-20230523-PREB-033-Attachment1 loadforecase_confidential	Base Load Forecast	Trade Secret Information under Section D(1) of Energy Bureau's Policy on Confidential Information, CEPR-MI-2016-0009

Attachment	Spreadsheet tab in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection, if applicable
ROI-LUMA-MI-2021-0004-20230523-PREB-033-Attachment1 loadforecase_confidential	FP Approved Load w Modifiers	Trade Secret Information under Section D(1) of Energy Bureau's Policy on Confidential Information, CEPR-MI-2016-0009
ROI-LUMA-MI-2021-0004-20230523-PREB-033Attachment 2 loadforecast modifiers_confidential	DG	Sensitive Commercial Information and Trade Secrets under Act 80-2011
ROI-LUMA-MI-2021-0004-20230523-PREB-033Attachment 2 loadforecast modifiers_confidential	CHP	Sensitive Commercial Information and Trade Secrets under Act 80-2011
ROI-LUMA-MI-2021-0004-20230523-PREB-033Attachment 2 loadforecast modifiers_confidential	EE	Sensitive Commercial Information and Trade Secrets under Act 80-2011
ROI-LUMA-MI-2021-0004-20230523-PREB-033Attachment 2 loadforecast modifiers_confidential	Summary Modifiers	Sensitive Commercial Information and Trade Secrets under Act 80-2011

Attachment	Spreadsheet tab in which Confidential Information is Found	Summary of Legal Basis for Confidentiality Protection, if applicable
ROI-LUMA-MI-2021-0004-20230523-PREB-033Attachment 2 loadforecast modifiers_confidential	DG and CHP Applied	Sensitive Commercial Information and Trade Secrets under Act 80-2011

WHEREFORE, LUMA respectfully requests that the Honorable Bureau **grant** this request for confidential treatment of the *Excel* spreadsheets ROI-LUMA-MI-2021-0004-20230523-PREB-033-Attachment1loadforecase_confidential.xlsx and ROI-LUMA-MI-2021-0004-20230523-PREB-033Attachment 2_loadforecast modifiers_confidential.xlsx, filed as part of *Exhibit 1* of the June 6th Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 8th day of June, 2023.

I hereby certify that this motion was filed using the electronic filing system of this Energy Bureau. I also certify that copy of this motion will be notified to the Puerto Rico Electric Power Authority, through attorneys of record: jmarrero@diazvaz.law_ and mvazquez@diazvaz.law; and to Genera PR LLC, through counsels of record, Jorge Fernandez-Reboredo, jfr@sbgblaw.com and Alejandro López Rodríguez, alopez@sbgblaw.com.



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