

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

NEPR

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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 of Information
Submitted as Part of LUMA's Responses to
Post-Technical Conference Requests for
Additional Information**

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
INFORMATION SUBMITTED AS PART OF LUMA'S RESPONSES TO POST-
TECHNICAL CONFERENCE REQUESTS FOR ADDITIONAL INFORMATION
("RFI")**

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 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 8, 2023, the Energy Bureau issued a Resolution and Order through which it amended the procedural calendar for the instant case and scheduled a Virtual Technical Conference to be held on June 9, 2023.

On May 23, 2023, this Honorable Energy Bureau issued a Resolution and Order with the subject Second Requirement of Information (“Second RFI”) – Review of LUMA’s Proposed Consolidated FY 2024 Budgets (“May 23rd Order”) that included an extensive list of requests for information. On June 6, 2023, LUMA filed a *Motion to Submit Responses to the Energy Bureau’s Second Request for Information in Compliance with the May 23, 2023 Order* submitting the responses and information requested by this Energy Bureau through the Second RFI.

On June 9, 2023, the Energy Bureau held a Technical Conference to discuss the System Annual Budgets (the “June 9th Technical Conference”). During the Technical Conference, this Energy Bureau issued a bench order for LUMA to respond to six additional RFIs (the “June 9th Requests”).

In what pertains to this Memorandum, this Energy Bureau directed that LUMA shall submit additional workpapers and supporting materials used to develop their FY 2024 Budget Proposal relating to estimated revenue between negotiation with third parties in addition to responding to other inquiries. In compliance with the June 9th Request, on June 15, 2023, LUMA filed a *Motion Submitting Responses to Request for Information Issued During Technical Conference of June 9, 2023* (the “June 15th Motion”), whereby LUMA submitted confidential information. As identified in the table below, LUMA submitted under seal of confidentiality, the spreadsheet TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0005 budget template Attachment 1 and its Response TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0002. LUMA identified that

those documents included sensitive commercial information and trade secrets and submitted public redacted versions of the spreadsheet and the response.

Supporting Workpapers Identification of Confidential Information	Summary of Legal Basis for Confidentiality Protection	Dated filed	Page in which Confidential Information is Found
TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0005_budget template_Attachment 1	Sensitive Commercial Information and Trade Secrets under Act 80-2011	June 15, 2023	Columns C, D, E, G, H and I, rows 7 through 15 and rows 21 through 29.
Response: TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0002	Sensitive Commercial Information and Trade Secrets under Act 80-2011	June 15, 2023	Full response

In the June 15th 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, 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 TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0005_budget template_Attachment 1 and its Response TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0002, under seal of confidentiality.

In compliance with the Energy Bureau’s Policy on Management of Confidential Information, LUMA submits this supporting memorandum of law that identifies and explains the legal basis for the confidential treatment of portions of the responses to the June 9th Requests submitted with the June 15th Motion before this Energy Bureau. It is respectfully submitted that the portions of the documents 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 documents that were filed with the June 15th Motion, is narrowly tailored to specifically protect the information that has been identified as confidential.

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 LPRC §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 LPRC §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 the identification of 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 should, “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)), 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 spreadsheet identified as TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0005_budget_template_Attachment 1 that was submitted with the June 15th Motion, includes sensitive commercial information on employee headcount and the costs associated therewith which LUMA keeps confidential as they could be used to make inferences as to average salaries paid to each category of officials and employees. As such, the information constitutes sensitive commercial information which LUMA protects from disclosure to third parties.

In light of the foregoing, LUMA requests that the spreadsheet TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0005_budget_template_Attachment 1 be maintained under seal of

confidentiality before this Energy Bureau as it contains sensitive commercial information which premature disclosure would also contravene public policy on trade secrets.

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 21st 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 TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0005_budget template_Attachment 1. See April 21st 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. 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"). On May 26, 2023, LUMA also submitted under seal of confidentiality the workpaper identified as RFI-LUMA-MI-2021-0004-20230523-PREB-001 Attachment 1_ Operating Expenditures.xlsx which is related to TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0005_budget template_Attachment 1. LUMA hereby requests that this Energy Bureau apply to the spreadsheet TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0005_budget template_Attachment 1, the same ruling and designation of confidentiality that this Energy Bureau applied in the April 21st Order and to LUMA's April 2022 Confidential Filing.

LUMA's response identified as TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0002 (third party attachments), is also confidential in nature as it includes details on estimated revenues

to be derived from certain contracts that are currently under negotiation with third-party companies. The information should be kept confidential as its publication may impact the ongoing negotiations with such third parties or other industry participants. Disclosure of the response identified as TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0002, filed on June 15, 2023 could harm LUMA's negotiations on the fees that private companies in Puerto Rico will pay for renting space on distribution poles (third party attachments) and place LUMA at a competitive disadvantage in procuring revenues for PREPA.

In sum, the confidential portions of the documents that were submitted confidentially with the June 15th Motion, contain sensitive commercial information regarding LUMA's estimating methods and assumptions and negotiation efforts conducted with third parties.

WHEREFORE, LUMA respectfully requests that the Honorable Bureau **take notice** of the aforementioned for all purposes and **grant** this request for confidential treatment to the spreadsheet TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0005 budget template Attachment 1 and Response TC-RFI-LUMA-MI-2021-0004-20230609-PREB-0002, filed on June 15, 2023.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 23rd day of June 2023.

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



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