

**GOVERNMENT 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 Confidentiality Request for HydroCo's NME Works Proposed as Submitted in PREPA's July 10 Motion

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIALITY REQUEST FOR
HYDRO CO'S NME WORKS PROPOSED AS SUBMITTED IN PREPA'S JULY 10
MOTION**

COMES NOW the Puerto Rico Electric Power Authority ("PREPA"), through its counsel of record, and respectfully submits and requests as follows:

1. On May 16, 2023, LUMA¹ filed a document titled *Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Proposed Annual T&D Projections Through Fiscal Year 2026* ("May 16 Motion") for the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") review and approval. The May 16 Motion included the following budget components: (i) the proposed T&D budget developed by LUMA, (ii) the proposed generation budget developed by Genera PR, LLC ("Genera") on behalf of the PREPA, for the PREPA subsidiary GENCO LLC ("GenCo"), and (iii) the proposed Budget developed by PREPA for its holding company, HoldCo, and its subsidiaries PREPA HydroCo LLC ("HydroCo") and PREPA PropertyCo, LLC ("PropertyCo").

2. On June 25, 2023, after a series of procedural events, including a technical conference

¹ LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as, "LUMA").

and various submissions including responses to the Energy Bureau's requests for information, the Energy Bureau entered *Resolution and Order* issuing a determination on the FY24 Annual Budgets for the electric utility system including the budgets for LUMA Energy, LLC and LUMA ServCo, LLC (collectively, "LUMA"), Genera-PR, LLC ("Genera") and PREPA ("June 25 Order").

3. The June 25 Order included a series of orders to PREPA. In what is pertinent to this motion, the Energy Bureau ordered PREPA to File with the Energy Bureau,

on or before fifteen (15) days from the issuance of the Resolution and Order, true and exact copies of any documents, information, scopes of works, application packages or petitions (approved or in draft) which are seeking federal funding for works to be conducted by HydroCo (both hydroelectric unites or sites and irrigation infrastructure or sites) in order for the Energy Bureau to validate the prudence of the NME budgets hereby **conditionally approved** by the Energy Bureau.

4. On July 10, 2023, in compliance with the June 25 Resolution and Order, PREPA filed a document titled *Motion to Submit HydroCo's NME Works Proposed for Federal Funding in Compliance with Portion of the June 25 Order* ("July 10 Motion"). In the July 10 Motion, PREPA submitted as Exhibit A the documents pertaining to the dams, reservoir dredging projects, and hydroelectric systems that comprise PREPA's hydroelectric fleet for which PREPA has or will submit approval for federal funding.

5. Documents in Exhibit A contain critical energy infrastructure information (CEII) that cannot be disclosed to the public. The CEII included in the Exhibit A documents, are global positioning system (GPS) coordinates of the hydroelectric fleet.

6. The following is a detailed list of the information that PREPA asserts is confidential and must be kept under seal.

EXHIBIT A- TITLE OF FOLDER	DESCRIPTION	CONFIDENTIAL INFORMATION GPS Location	REQUEST FOR CONFIDENTIALITY
Exhibit A-DAMS			
DR-4339 GM 334770 Guajataca Dam			
	GM334470 DR4339PR PREPA SOW- Guajataca Dam (1)_Redacted.pdf	Page 4	CEII
DR-4339 GM 721184 Guayabal Dam Seismic Retrofit			
Submitted 2023 0714	DR4339 PREPA SOW- Guayabal Dam Seismic Retrofit Amended 2023.07.14.pdf	Page 4	CEII
Submitted 2023 0424	DR4339 PREPA SOW- Guayabal Dam Seismic Retrofit 042423(1) Redacted.pdf	Page 4	CEII
	71184 Guayabal Dam HMP 2023 04- 8_Redacted.pdf	Page 1	CEII
Submitted 2023 0410	DR4339 PREPA SOW- Guayabal Dam Seismic Retrofit 042423_Redacted.pdf	Page 4	CEII
Exhibit A- HYDRO ELECTRIC			

SYSTEMS			
	4339-1966_Final App Package_20221015_Final Application packet_Redacted.pdf	Page 5	CEII
Exhibit A- DR-4339-COR3-1966 PREPA Hydrofleet RFI Response			
System Condition	136271-DR4339PR-Hydroelectric Power Plants Supporting Reports_Redacted.pdf	Pages 3, 15-25, 27-28, 54-57, 60, 65, 92, 106, 109, 112-127, 137-142, 148, 162, 172-178, 181, 185, 187, 189-190, 192-193, 201-203, 218-219, 222-225, 238,240, 249-252, 267-268, 270, 274-275, 278-279, 282, 285, 296, 313; 321-323, 325-326, 337, 348, 361-368, 361-368, 374-374, 385, 392-394, 403-414, 416, 417	CEII
DR-4339 GM 180723 Rio Blanco Hydroelectric System			
	04-01-02-03 Naguabo plant hydro (1)_Redacted.pdf	Pages 7, 14	CEII
Submitted 2023 0426			

	180723 DR4339PR PREPA SOW- Rio Blanco Hydroelectric System 042623 (1)_Redacted.pdf	Pages 4, 5	CEII
DR-4339 GM 436468 Toro Negro Hydroelectric System			
Submitted 2023 0330			
	GM 436468 DR 4339PR PREPA SOW- Toro Negro Hydroelectric System 033023_Redacted.pdf	Page 4	CEII
ExhibitA- RESERVOIR DREDGING PROJECTS			
DR-4339 GM 335406 Matrullas			
Submitted 20230515	GM335206 DR4339PR PREPA SOW- Matrullas Reservoir Dredging_Redacted.pdf	Pages 4,6	CEII
	Preliminary Engineering Report Matrullas Reservoir -28- 2023_Redacted.pdf	Pages 6, 8,10,15	CEII
DR-4339 GM 334773 Lucchetti			
Submitted 20230605	GM334773 DR4339PR PREPA SOW- Lucchetti Reservoir	Page 4	CEII

	Dredging_Redacted.pdf		
	Preliminary Engineering Report Lucchetti Reservoir 04-28-2023_Redacted.pdf	Pages 6, 10, 16,19, 21, 23, 26	CEII
DR-4339 GM 334803 Loco			
Submitted 2023 0522	GM334803 DR4339PR PREPA SOW Loco Reservoir Dredging_Redacted.pdf	Page 4	CEII
	Preliminary Engineering Report Loco Reservoir 04-13-2023_Redacted.pdf	Pages 6,7,9,14	CEII
DR-4339 GM 335207 Guineo			
Submitted 0515	GM335207 DR4339PR PREPA SOW- Guineo Reservoir Dredging_Redacted.pdf	Page 4, 6	CEII
	Preliminary Engineering Report Guineo Reservoir 04-28-2023_Redacted.pdf	Pages 6, 8, 10, 15	CEII
DR-4339 GM 334798 Guerrero			
Submitted 2023 0606	GM334798 DR4339PR PREPA SOW- Guerrero Reservoir Dredging_Redacted.pdf	Page 4	CEII
	Preliminary Engineering Report 04-28-2023_Redacted.pdf	Pages 6, 10, 16, 19,21,23,26	CEII
DR-4339 GM			

334813 Guayo			
Submitted 2023 0531	GM334813 DR4339PR PREPA SOW-Guayo Reservoir Dredging (1)_Redacted.pdf	Page 4	CEII
	Preliminary Engineering Report Guayo Reservoir 04-28-2023 iml_Redacted.pdf	Pages 6, 10, 15	CEII
DR-4339 GM 334772 Guayabal			
Submitted 2023 0508	GM334772 DR4339PR PREPA SOW- Guayabal Reservoir Dredging_Redacted.pdf	Page 4	CEII
	Preliminary Engineering Report Guayabal Reservoir 4-28- 2023_Redacted.pdf	Pages 4, 10, 14	CEII
DR-4339 GM 334771 Guajataca			
Submitted 20230606	GM334771 DR4339PR PREPA SOW-Guajataca Reservoir Dredging_Redacted.pdf	Page 4	CEII
	Preliminary Engineering Report Guajataca Reservoir_Redacted.pdf	Pages 6, 11, 17	CEII
DR-4339 GM 334769 Garzas			
Submitted 2023 0606	GM334769 DR4339PR PREPA SOW - Garzas Reservoir Dredging_Redacted.pdf	Page 4	CEII
	Preliminary Engineering Report Garzas Reservoir	Pages 6, 8, 10, 16	CEII

	04-27-223_Redacted.pdf		
DR-4339 GM178722 Caonillas			
Submitted 2023 0503	GM178722 DR4339PR PREPA SOW- Caonillas Dredging_Redacted.pdf	Page 4	CEII
	Preliminary Engineering Report Caonillas 04-18- 23 Final_Redacted.pdf	Pages 7, 11	CEII
DR-4339 GM 334811 Dos Bocas			
Submitted 2023 0427	GM334811 DR4339PR PREPA SOW- Dos Bocas Dredging- FINAL_Redacted.pdf	Page 4	CEII
	Preliminary Engineering Report Dos Bocas 04-18- 2023 Final_Redacted.pdf	Pages 7,11	CEII
Submitted 2023 0626	GM334811 DR4339PR PREPA SOW- Dos Bocas Dredging- FINAL_Redacted.pdf	Page 4	CEII
	Preliminary Engineering Report Dos Bocas 04-18- 2023 Final_Redacted.pdf	Pages 7, 11	CEII

7. Article 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*, Act no. 57 of 2014, as amended (“Act 57”)², provides that “any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted has any confidentiality

² *Puerto Rico Energy Transformation and RELIEF Act*, Act no. 57 of May 27, 2014, 22 L.P.R.A. §§ 1051-1056.

privilege, such person may request the [Bureau] to treat such information as such[.]” *Id.* at Sec. 6.15. “If the Energy [Bureau], after the appropriate evaluation, believes such 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.* at Sec. 6.15(a). If the Energy Bureau determines that the information is confidential, “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.” *Id.* at Sec. 6.15(b). “The Energy [Bureau] shall swiftly act on any privilege and confidentiality claim made by a person subject to its jurisdiction by means of a resolution to such purposes before any allegedly confidential information is disclosed.” *Id.* at Sec. 6.15(c).

8. Pursuant to its vested powers, the Energy Bureau approved the *Regulation on Adjudicative, Notices of Compliance, Rate Review and Investigations Proceedings* (“Regulation 8543”).³ Regarding the safeguards that the Energy Bureau gives to confidential information, Regulation 8543 provides that:

[i]f in compliance with the provisions of [Regulation 8543] or any of the Energy Bureau’s orders, a person has the duty to disclose to the Energy Bureau information 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 the material merits protection, proceed according to what is set forth in Article 6.15 of Act No. 57-2014, as amended.

Regulation 8543 at Sec. 1.15.

³ Energy Bureau, *Regulation on Adjudicative, Notices of Compliance, Rate Review and Investigations Proceedings*, No. 8543 (December 16, 2015).

9. Federal and Puerto Rico law protect the confidentiality of CEII, the public disclosure of which may pose a security threat in that the information could be useful to a person or group in planning an attack on critical infrastructure. *See, e.g.*, 18 C.F.R. § 388.113, as amended by Federal Energy Regulatory Commission (FERC) Order No. 683, *Critical Energy Infrastructure Information* (issued September 21, 2006); *USA Patriot Act of 2001*, § 1016, creating the *Critical Infrastructures Protection Act of 2001*, including 42 U.S.C. § 5195c(e) (defining Critical infrastructure). FERC regulations subject such information to limitations on use and disclosure to “ensure that information deemed CEII stays out of the possession of terrorists.” 18 C.F.R. § 388.113(d)(4). *Off. of People's Counsel v. Pub. Serv. Commn.*, 21 A.3d 985, 991, Util. L. Rep. P 27157, 2011 WL 2473405 (D.C. App. 2011).

10. Under the Critical Infrastructures Protection Act of 2001, the term “critical infrastructure” means “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.” 42 U.S.C. § 5195c(e).

11. In 2006, FERC Order no. 683 amended the regulations for gaining access to CEII and simplified procedures for obtaining access to CEII without increasing vulnerability of the energy infrastructure and ensuring that access to CEII does not facilitate acts of terrorism.

12. A utility is not required to obtain FERC or other federal government approval in order to designate information as CEII. For example, information required by FERC’s Annual Transmission Planning and Evaluation Report, Form No. 715, (“FERC No. 715”), is *de facto* considered CEII and is automatically afforded the heightened protections. FERC No. 715 requires that any transmitting utility that operates integrated (non-radial) transmission facilities at

or above 100 kV must annually submit information including but not limited to: Power Flow Base Cases, Transmitting Utility Maps and Diagrams, Transmission Planning Reliability Criteria, Transmission Planning Assessment Practices, and Evaluation of Transmission System Performance. Any utility that submits the required transmission information pursuant to FERC No. 715 does so with the knowledge that, as stated in the Form's Instructions, FERC "considers the information collected by this report to be CEII and will treat it as such." *See also* 18 C.F.R. § 141.300(d) relating to the Form and CEII.

13. Mainland regulators typically do not require a utility that designates material as CEII to follow any process before the federal government in order to make or support such a designation, and, further, that the regulator, in its informed discretion, can establish limits on how information that it considers CEII can be accessed.

14. Furthermore, and regarding the argument made by PREPA, FERC has ruled on several occasions that global positioning system (GPS) coordinates of any project features "qualify as CEII because it provides more than just location." *See e.g.* Final Rule, Docket Nos. RM02-4-000, PL02-1-000; Order No. 630, Note 31, entered on February 21, 2003 (ruling that FERC considered the global positioning system coordinates of any project features (precise surveyed or GPS coordinates at or above two decimal points of accuracy of equipment and structures) gas information to qualify as CEII because it provides more than just location).⁴

15. The Energy Bureau, in prior dockets has accepted the Authority's designations of material as CEII, recognizing that both federal law and Puerto Rico law support such designations when applicable.⁵ Accordingly, and pursuant to the above, it is respectfully requested that the Honorable Energy Bureau find that the information categorized by PREPA as

⁴ Federal Register: March 3, 2003 (Volume 68, Number 41); Rules and Regulations, pp. 9857-9873.

⁵ *See e.g. Resolution and Order* entered on August 27, 2019, in case no. CEPR-AP-2018-0001, *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*.

CEII is confidential and that the Secretary of the Energy Bureau be directed to keep the confidential CEII under seal.

WHEREFORE, PREPA respectfully requests the Energy Bureau to take notice of the aforementioned, find that the information categorized by PREPA as CEII is confidential and order the Secretary of the Energy Bureau to keep the confidential CEII under seal.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of July 2022.

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CERTIFICATE OF SERVICE

It is hereby certified that, on this same date, I have filed the above motion with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and a courtesy copy of the filing was sent to LUMA through its legal representatives at margarita.mercado@us.dlapiper.com and laura.rozas@us.dlapiper.com and to Genera-PR, LLC through its legal representatives jfr@sbgblaw.com; alopez@sbgblaw.com; legal@genera-pr.com; regulatory@genera-pr.com

In San Juan Puerto Rico on this 20th day of July 2023.

/s Joannely Marrero Cruz
Joannely Marrero Cruz