

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

<b>NEPR</b>  <b>Received:</b>  <b>Jul 27, 2023</b>  <b>8:55 PM</b>
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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: Submittal of Negotiated Contract with  
Selected IRP Technical Consultant and Related  
Information and Request for Confidentiality**

**MOTION TO SUBMIT NEGOTIATED CONTRACT WITH SELECTED IRP  
TECHNICAL CONSULTANT AND RELATED INFORMATION AND REQUEST FOR  
CONFIDENTIALITY**

**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 December 17, 2021, LUMA filed with this Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”), along with a request for confidential treatment, the proposed Request for Qualifications (“RFQ”), Request for Proposals (“RFP”) and first draft of the contract for the procurement (together, the “RFQ/RFP Package”) of the technical consultant to be engaged for IRP-related services (“IRP Technical Consultant”) for the Energy Bureau’s approval in accordance with 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 the Puerto Rico Electric Power Authority’s (“PREPA”) Integrated Resource Plan (“IRP”) and established a

modified action plan (the “August 24<sup>th</sup> 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 17<sup>th</sup> Motion”). In the December 17<sup>th</sup> Motion, LUMA also requested the Energy Bureau to approve a proposed streamlined IRP Consultant Contracting Process described in the Motion and in an Exhibit 2 thereto (the “Streamlined IRP Consultant Contracting Process”). *See* December 17<sup>th</sup> Motion at pages 2-6.

2. After other procedural events, on April 22, 2022, the Energy Bureau issued a Resolution and Order (the “April 22<sup>nd</sup> Order”) approving “the requests of LUMA to streamline the contracting process for an IRP Technical Consultant” (the Streamlined IRP Consultant Contracting Process; now, “Approved IRP Consultant Contracting Process”) and “LUMA’s use of a draft RFQ/RFP/contract form” (the Approved RFQ/RFP Package) (*see* April 22<sup>nd</sup> Order on page 5) and granted confidential treatment designation to the Approved 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. The Energy Bureau also 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.

3. On July 1, 2022, LUMA submitted the first status update required under the April 22<sup>nd</sup> Order informing the Energy Bureau of the issuance of the RFQ/RFP for the IRP Technical Consultant, which was issued on May 17, 2022 (the “Issued RFQ/RFP Package”), 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.

4. 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 Issued RFQ/RFP Package (“Selected Proponent”) and the supporting documentation. LUMA also 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 31<sup>st</sup> Motion”).

5. Among the documents submitted with the August 31<sup>st</sup> Motion, LUMA included copy of the Issued RFQ/RFP Package, as updated and clarified from the version included in the Approved RFQ/RFP Package, for purposes of issuance in the procurement process. LUMA also included standard documents, including the professional services agreement form to which the substantive contractual terms, conditions, and associated forms which were identified as Exhibits A through H would be attached.

6. On October 3, 2022, LUMA filed with the Energy Bureau the second and last status update required by, and in compliance with, the April 22<sup>nd</sup> Order on the Approved IRP Consultant Contracting Process and the initial stages of the IRP preparation as of that date.

7. On October 14, 2022, the Energy Bureau issued a Resolution and Order (“October 14<sup>th</sup> 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 14<sup>th</sup> Order at page 2.<sup>1</sup>

8. On March 31, 2023, LUMA submitted to this Energy Bureau a status update on the IRP Consultant contracting process informing this Energy Bureau that LUMA had been working with the Selected Proponent to finalize the contract in compliance with LUMA’s Procurement Manual and applicable Energy Bureau orders and regulations. LUMA further informed the Energy Bureau that it had confronted delays, which, as discussed in a Confidential Exhibit 1, were the result of unanticipated issues faced during the procurement process which LUMA was working on resolving. See *Motion Submitting Update on IRP Technical Consultant Contracting Process, Request for Modification of Procedural Timeline and Request for Confidential Treatment* filed on March 31, 2023 (“March 31<sup>st</sup> Motion”). In the March 31<sup>st</sup> Motion, LUMA also submitted a revised proposed timeline of activities (as Exhibit 2) and requested this Energy Bureau to consider scheduling the initial conference related to the IRP no earlier than May 2023.

9. After other procedural developments, on July 12, 2023, the Energy Bureau issued a Resolution and Order in a new case entitled *In re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. NEPR-AP-2023-0004 whereby it initiated an administrative proceeding for the review of the proposed Integrated Resource Plan to be filed by LUMA as PREPA’s agent. Through the July 12<sup>th</sup> Resolution and Order, the Energy Bureau scheduled an initial virtual technical conference for August 8, 2023 (the “August 8<sup>th</sup> Technical Conference”). The Energy Bureau further took notice that “the initial technical conference will

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

discuss whether the expected March 2024 filing date for the IRP will be retained given the Technical Consultant contracting issues” that LUMA informed to the Energy Bureau in its March 31<sup>st</sup> Motion.

10. On July 26, 2023, the Energy Bureau entered a Resolution and Order in Case No. NEPR-AP-2023-0004, whereby it ordered LUMA “to be prepared to address [conflict of interest] issues during the August 8, 2023 Technical Conference”.

11. LUMA hereby respectfully informs the Energy Bureau that it has concluded the contractual negotiations with the Selected Proponent.

## **II. Submittal of Negotiated Contract and Related Information**

12. In accordance with the Approved IRP Consultant Contracting Process, LUMA hereby submits to the Energy Bureau the contract negotiated with the Selected Proponent. *See Exhibit 1* (the “Final Contract”).

13. It is respectfully informed that the Final Contract addresses the conflict of interest issues in its Exhibit I, including Attachments 1 through 4 of that Exhibit. If this Energy Bureau deems it necessary after reviewing the Final Contract, LUMA remains available to further discuss Exhibit I in a confidential technical conference scheduled for that purpose in this proceeding. LUMA notes that since the Final Contract is pending approval and execution, for the reasons

discussed in Section III below, any discussion regarding its provisions should be done under seal of confidentiality in a technical conference scheduled specifically for that purpose.

14. LUMA also includes a redline version of the Final Contract showing the changes made to the draft contract included in the Approved RFQ/RFP Package (“December 2021 Draft Contract”) (*see Exhibit 2*).

15. The detailed scope of services for the IRP Technical Consultant’s services was included in Section 9 of the Approved RFQ/RFP Package (“December 2021 Scope of Services”) as well as the Issued RFQ/RFP Package. This scope of services was incorporated into the body of the Final Contract as Section 2.3 of Exhibit B (“Final Scope of Services”).

16. To facilitate the review of the changes to the scope of services, LUMA is also submitting herein a separate redline version of the Final Scope of Services showing the changes made to the December 2021 Scope of Services (*see Exhibit 3*).

17. Finally, LUMA is submitting herein the description and explanation of the changes reflected in the aforementioned documents in the form of a table (*see Exhibit 4*). LUMA notes that Exhibit 4 also indicates where the language required by the Energy Bureau in the October 14<sup>th</sup> Order was included in the Final Contract.

18. LUMA submits Exhibits 1, 2, 3 and 4 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

Exhibits 1 through 4 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**

19. 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).

20. 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).

21. 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).

22. 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**

23. It is respectfully submitted that the documents included in Exhibits 1 through 4 herein are confidential because they were documents generated as part of a competitive procurement process that has not been completed. As mentioned, these documents include the Final Contract (in clean and redline versions) negotiated with the Selected Proponent for IRP Technical Consultant and a document with information on the evaluation made in connection with the negotiated provisions of the Final Contract. Thus, LUMA maintains these types of documents and has maintained Exhibits 1 through 4 in confidence to protect the purity of its competitive procurement processes. In addition, these documents are subject to review by this honorable Energy Bureau - with Exhibit 1 specifically being subject to the Energy Bureau's approval, and the Energy Bureau's determination could potentially affect the determinations made by LUMA in this stage of the competitive procurement process.

24. Disclosure of any of the above information could adversely affect the financial, competitive or bargaining position of LUMA. Moreover, this honorable Energy Bureau already ruled in the April 22<sup>nd</sup> Order that the RFP/RFQ Package included in Exhibit 3 of the December 17<sup>th</sup> Motion- which included the December 2022 Draft Contract- was subject to confidential designation and treatment. *See* April 22<sup>nd</sup> Order at page 6. The Energy Bureau also approved, in its October 14<sup>th</sup> Order, LUMA's request to maintain confidential the documents submitted in its August 31<sup>st</sup> Motion (i.e., the list of Qualified Proponents, the determination made by LUMA to select the Selected Proponent, and the supporting documentation, including the Issued RFQ/RFP Package and the May 2022 Draft Contract) (*see* October 14<sup>th</sup> Order at page 3) which request was based on the same reasons expressed in this memorandum to support the request for confidentiality of Exhibits 1

through 4 herein (see August 31<sup>st</sup> Motion at pages 6-13). As in the case of the documents submitted with the August 31<sup>st</sup> Motion, Exhibits 1 through 4 include documents determined confidential as part of the RFP/RFQ Package and pursuant to the April 22<sup>nd</sup> Order while Exhibit 3 contains information on the evaluations conducted in the procurement process- specifically, in this case, the changes made to the different versions of the contract.

25. Furthermore, LUMA is required to keep the documents in Exhibits 1 through 4 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 17<sup>th</sup> 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 and ends when the process ends, at which time the documents in Exhibits 1 through 4 may be made public (except for specified information protected as confidential under other provisions of law). Therefore, LUMA respectfully submits that the protection requested for Exhibits 1 through 4 herein is proposed in a manner that least affects the public interest, transparency, and the rights of the parties involved and this proceeding.

26. 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)), which information would be made public after the conclusion of the RFP process (*see id.*). 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.

27. In sum, Exhibits 1 through 4 contain detailed information and requirements pertaining to a competitive procurement process that are **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 which affects the preparation of the IRP. Reasonable measures have been taken to protect the documents included in Exhibits 1 through 4 to safeguard this Energy Bureau’s authority to review and approve them. These measures apply only during the time the procurement is ongoing (except for specified information protected as confidential under other provisions of law). Therefore, the public interest is best served if this Energy Bureau keeps and maintains Exhibits 1 through 4 confidentially in their 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.

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

<b>Document</b>	<b>Date of Submission</b>	<b>Where Confidential Information is Found (Identification of Documents)</b>	<b>Legal Provisions and Summary of Legal Basis for Confidentiality Protection, if applicable</b>
Exhibit 1	July 27, 2023	Entire document	<p>Section 6.15 of Act 57-2014 and Section 1.10(i) of Act 17-2019</p> <p>Document subject to review and approval by this Energy Bureau 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 22<sup>nd</sup> Order.</p>
Exhibit 2	July 27, 2023	Entire document	<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</p>

<b>Document</b>	<b>Date of Submission</b>	<b>Where Confidential Information is Found (Identification of Documents)</b>	<b>Legal Provisions and Summary of Legal Basis for Confidentiality Protection, if applicable</b>
			approved by the Energy Bureau in the April 22 <sup>nd</sup> Order.
Exhibit 3	July 27, 2023	Entire document	<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 is also subject to confidentiality restrictions pursuant to the terms of the RFQ/RFP Package approved by the Energy Bureau in the April 22<sup>nd</sup> Order.</p>

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 4	July 27, 2023	Entire document	<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 is also subject to confidentiality restrictions pursuant to the terms of the RFQ/RFP Package approved by the Energy Bureau in the April 22<sup>nd</sup> Resolution.</p>

**IV. Conclusions**

27. LUMA respectfully requests this Energy Bureau to expeditiously approve the Final Contract included in Exhibit 1 so that LUMA may promptly proceed with the execution of the Final Contract, which is the final step in the Approved IRP Consultant Contracting Process, so as to allow sufficient time for LUMA to onboard the IRP Technical Consultant and have them attend the August 8<sup>th</sup> Technical Conference. LUMA also respectfully requests that the Energy Bureau

grant its request for confidentiality regarding Exhibits 1, 2, 3 and 4 confidential pursuant to the Policy on Confidential Information

**WHEREFORE**, LUMA respectfully requests the Energy Bureau to **take notice** of the aforementioned; expeditiously **approve** the Final Contract negotiated with the Selected Proponent included in *Exhibit 1* herein; **grant** the request for confidential treatment of *Exhibits 1, 2, 3 and 4* herein; and **deem** LUMA in compliance with Section V(B)(2) of the August 24<sup>th</sup> Order.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 27<sup>th</sup> day of July 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](mailto:mvazquez@diazvaz.law).



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*Exhibit 1*

*Final Contract*

[Submitted under seal of confidentiality]

Exhibit 2

*Redline showing changes in the Final Contract made to the December 2021 Draft Contract*

[Submitted under seal of confidentiality]

Exhibit 3

*Redline showing changes in the Final Scope of Services made to the  
December 2021 Scope of Services*

[Submitted under seal of confidentiality]

Exhibit 4

*Table of changes*

[Submitted under seal of confidentiality]