

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

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**IN RE:**

Review of the Puerto Rico Electric Power  
Authority Integrated Resource Plan

**CASE NO. NEPR-AP-2023-0004**

**SUBJECT: Motion Submitting Revised Version of  
Exhibit I of Final Contract for Technical Consultant and  
Related Documents, Request for Approval of Final  
Contract, and Request for Confidential Treatment**

**MOTION SUBMITTING REVISED VERSION OF EXHIBIT I OF FINAL CONTRACT  
FOR TECHNICAL CONSULTANT AND RELATED DOCUMENTS, REQUEST FOR  
APPROVAL OF FINAL CONTRACT, AND REQUEST FOR CONFIDENTIAL  
TREATMENT**

**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. Relevant Background**

1. On July 12, 2023, this Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order in this docket, whereby it initiated the instant administrative proceeding for the review of the proposed 2024 Integrated Resource Plan (the “2024 IRP”) to be filed by LUMA as the agent for the Puerto Rico Electric Power Authority pursuant to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated June 22, 2020 (the “July 12<sup>th</sup> Resolution and Order”).

2. In what is pertinent, through the July 12<sup>th</sup> Resolution and Order, the Energy Bureau took notice of Exhibit 1 to LUMA’s confidential *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 in Case No. NEPR-MI-2020-0012, *In re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan* (the “March 31<sup>st</sup> Motion”), through which LUMA informed the Energy Bureau of certain delays impacting the contracting of the IRP Technical Consultant. The Energy Bureau also expressed that “the initial technical conference will discuss whether the expected March 2024 filing date for the 2024 IRP will be retained given the Technical Consultant contracting issues”.

3. The Energy Bureau also granted LUMA’s request, as included in the March 31<sup>st</sup> Motion, that the Energy Bureau schedule the initial technical conference pursuant to the *Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority*, Regulation 9021 dated April 24, 2018, to no earlier than May 2023 to provide sufficient time for LUMA to be able to complete the IRP Technical Consultant contracting process in anticipation of the technical conference.

4. Accordingly, the Energy Bureau scheduled the initial technical conference in this administrative proceeding for August 8, 2023 (the “August 8<sup>th</sup> Technical Conference”) and included as Attachment A an Agenda for said conference.

5. After other procedural developments, on August 3, 2023, LUMA filed an *Informative Motion and Submission of Proposed Revised Agenda for Technical Conference Scheduled for August 8, 2023* (the “Informative Motion”). Through the Informative Motion, LUMA informed that on July 27, 2023, LUMA had filed a *Motion to Submit Negotiated Contract with Selected IRP Technical Consultant and Related Information and Request for Confidentiality* in Case No. NEPR-MI-2020-0012 whereby it informed the Energy Bureau that it concluded the

contractual negotiations with the Selected Proponent and submitted the Final Contract for the Energy Bureau's approval (the "July 27<sup>th</sup> Motion").<sup>1</sup> LUMA also proposed certain modifications to the Agenda issued by the Energy Bureau through the July 12<sup>th</sup> Order.

6. Regarding the topic of the contracting of the IRP Technical Consultant, LUMA respectfully requested that it be addressed in a separate and confidential portion of the August 8<sup>th</sup> initial technical conference, once the discussion of the rest of the topics included in the Agenda, as modified per LUMA's request, had been addressed.

7. On August 8, 2023, LUMA appeared at the August 8<sup>th</sup> Technical Conference and, in compliance with the July 12<sup>th</sup> Order, offered a presentation to the Energy Bureau covering the items included in the technical conference's Agenda.

8. After covering the items in the Agenda, the Energy Bureau opened a confidential portion of the initial technical conference for purposes of discussing the contracting of the IRP Technical Consultant. During this discussion, LUMA agreed to submit a revised version of Exhibit I of the Final Contract with the IRP Technical Consultant addressing the issues discussed.

## **II. Submission of Revised Version of Exhibit I of the Final Contract with the IRP Technical Consultant and Related Documents, Request for Approval of Final Contract, and Request for Confidential Treatment**

9. As per the discussion during the confidential portion of August 8<sup>th</sup> Technical Conference, LUMA herein submits as *Exhibit 1*, a revised version of Exhibit I of the Final Contract with the IRP Technical Consultant and, as *Exhibit 2*, a redline depicting the changes between the version of Exhibit I submitted with LUMA's July 27<sup>th</sup> Motion and this current version. In addition, to reflect these revisions and the matters discussed with the Energy Bureau, LUMA also submits

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<sup>1</sup> In addition to the Final Contract, which was submitted as Exhibit 1 of the July 27<sup>th</sup> Motion, LUMA included as Exhibits 2 and 3 therewith, the redlines depicting changes made to the draft contract and the scope of services. A table summarizing and describing the substantive changes was submitted as Exhibit 4 of the July 27<sup>th</sup> Motion.

herein: (a) as *Exhibit 3*, the Final Contract (except for Exhibit I which is being separately submitted in Exhibit 1 hereto) with a revision in Section 8.2 (Contractor Representations) of Exhibit A, in redline form showing the changes made to the original version submitted with LUMA's July 27<sup>th</sup> Motion; and, as *Exhibit 4* a Contractor Certification. LUMA respectfully requests this honorable Energy Bureau to **approve** the Final Contract in its entirety as set forth in Exhibits 3 and 1 herein so that LUMA can proceed to execute it with the Selected Proponent.

10. LUMA requests confidential treatment of *Exhibits 1, 2, 3 and 4* pursuant to the Energy Bureau's Policy on Confidential Information, CEPR-MI-2016-0009, Section A, as amended by the Resolution of September 20, 2016, CEPR-MI-2016-0009, and to the provisions of Article 6.15 of Act 57-2014 and Act 80-2011.

### **III. Memorandum of Law in Support of Request for Confidential Treatment**

#### **A. Applicable Laws and Regulations**

11. 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).

12. 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).

13. 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).

14. 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**

15. It is respectfully submitted that the documents included as Exhibits 1, 2, 3 and 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 revised version of *Exhibit I* to the Final Contract (in clean and redline versions) negotiated with the Selected Proponent for IRP Technical Consultant, a revised version of the Final Contract and a Contractor Certification related to these documents. LUMA maintains these types of documents and has maintained Exhibits 1, 2, 3 and 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 Exhibits 1 and 3 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.

16. Disclosure of any of the above information could adversely affect the financial, competitive or bargaining position of LUMA. Moreover, this honorable Energy Bureau already granted confidential designation and treatment to Exhibit 1 of the March 31<sup>st</sup> Motion which contained a description of the developments at issue related to the procurement and contracting of the IRP Technical Consultant (this confidential treatment was granted by this Energy Bureau in the July 12<sup>th</sup> Resolution and Order and the July 27<sup>th</sup> Motion to submit negotiated contract with selected technical consultant), as well as of the confidential portion of the August 8<sup>th</sup> Technical Conference in which these subjects were also discussed.

17. 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. Exhibits 1 through 4 could be considered as containing information that would be covered in such report. In addition, pursuant to the mentioned provision of the RFQ/RFP Package, 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, 2, 3 and 4* herein is proposed in a manner that least affects the public interest, transparency, and the rights of the parties involved and this proceeding.

18. 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.

19. In sum, *Exhibits 1, 2, 3 and 4* contain 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 2024 IRP. Reasonable measures have been taken to protect the documents included in *Exhibits 1, 2, 3 and 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, 2, 3 and 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.

20. 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	August 30, 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	August 30, 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 approved by the Energy Bureau in the April 22<sup>nd</sup> Order.</p>
Exhibit 3	August 30, 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 approved by</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
			the Energy Bureau in the April 22 <sup>nd</sup> Order.
Exhibit 4	August 30, 2023	Entire document	Section 6.15 of Act 57-2014 and Section 1.10(i) of Act 17-2019  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 approved by the Energy Bureau in the April 22 <sup>nd</sup> Order.

**WHEREFORE**, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned; **accept Exhibits 1, 2, 3 and 4** of this Motion; **approve** the Final Contract in its entirety as set forth in Exhibits 3 and 1 herein; and **grant** LUMA’s request for confidential treatment of Exhibits 1, 2, 3 and 4 of this Motion.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico on August 30, 2023.

I 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 counsel for PREPA mvazquez@diazvaz.law and jmarrero@diazvaz.law; and to Genera PR LLC through brannen@genera-services.com; kbolanos@genera-pr.com; regulatory@genera-pr.com.



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*Exhibit 1*

Revised Exhibit I

[Submitted under seal of confidentiality]

*Exhibit 2*

Redline of Exhibit I

[Submitted under seal of confidentiality]

*Exhibit 3*

Revised Final Contract in Redline (without Exhibit I)

[Submitted under seal of confidentiality]

*Exhibit 4*

Contractor Certification

[Submitted under seal of confidentiality]