

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

**NEPR**

**Received:**

**Oct 10, 2023**

**8:25 PM**

IN RE: REVIEW OF LUMA'S INITIAL  
BUDGETS

**CASE NO. NEPR-MI-2021-0004**

**SUBJECT: Motion in Compliance with September 18, 2023 Order to Submit Breakdown of Budgeted Amounts and Expenditures for Federally Funded Projects in Fiscal year 2023 and Request for Confidentiality of Portions Thereof**

**MOTION IN COMPLIANCE WITH ORDER TO SUBMIT BREAKDOWN OF  
BUDGETED AMOUNTS AND EXPENDITURES FOR FEDERALLY FUNDED  
PROJECTS IN FISCAL YEAR 2023 AND SUPPORTING EXPLANATIONS AND  
REQUEST FOR CONFIDENTIAL TREATMENT OF PORTIONS THEREOF**

**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. Motion in Compliance with Resolution and Order of September 18, 2023 relating to federally funded projects in Fiscal Year 2023.**

1. On May 31, 2021, this honorable Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") issued and published a Resolution and Order approving LUMA's Initial Budgets ("May 31<sup>st</sup> Resolution and Order").

2. In the May 31<sup>st</sup> Resolution and Order, the Energy Bureau listed "requirements for LUMA to fulfill during the Interim Period and going forward" for reporting on the Initial Budgets T&D System spending amounts and federal funding activity listed in Section IV, paragraphs 2 and 3 thereof, respectively. *See* May 31<sup>st</sup> Resolution and Order at pp. 36-37. With respect to the

reporting on the Initial Budgets, the May 31<sup>st</sup> Resolution and Order provided, in Section IV, paragraph 2, that:

LUMA shall provide quarterly reports to the Energy Bureau detailing Initial Budget spending amounts, broken out by spending initiative, and detailing any variances from the Initial Budget filing. These reports should also include detail allowing the Energy Bureau to assess funding, withdrawals and outstanding balances in the Operating Budget, the Capital Budget and the Generation Budget Accounts outlined in the [Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement executed among the Puerto Rico Electric Power Authority (“PREPA”), LUMA and the Puerto Rico Public Private Partnerships Authority (“P 3 Authority”) dated as of June 22, 2020 (“T&D OMA”)].

*Id.*

3. On July 16, 2021, this Energy Bureau issued a Resolution and Order (the “July 16<sup>th</sup> Resolution and Order”) in which it modified the federal funding reporting requirements under the May 31<sup>st</sup> Resolution and Order to provide as follows:

LUMA shall submit to the Energy Bureau, on a quarterly basis, summary reports outlining federal funding activity. These summary reports shall include aggregated information showing the cumulative amount of federal funding applied for by LUMA and/or PREPA, broken out by the source of such funding, the incremental amount of federal funding applied for in the reporting quarter, and both the cumulative and monthly amount of federal funding received.

July 16<sup>th</sup> Resolution and Order, page 6.

4. On February 27, 2023, this Energy Bureau issued a Resolution and Order whereby it approved the Certified Budgets for Fiscal Year 2023, required that the quarterly reports explain and justify variances, and included the following:

1. T&D Operating Budget; Capital Budgets, both Federally- Funded and Non Federally Funded; Shared Services and all Other expenses;
2. project level detail for Capital Budgets;
3. program level detail for Improvement Portfolios;
4. both individual quarter and year to date activity;
5. actual spending amounts, broken out by spending initiative, and detailing all variances from the approved budget;
6. detail to enable the Energy Bureau to assess funding, expenditures and outstanding balances in the Operating Budget, the Capital Budget and the Generation Budget accounts as specified in the OMA; and

7. load and Sales Forecasts compared with actual Load and Sales.

See February 27 Order, page 28.

5. In compliance with the quarterly reporting requirements set forth in the May 31<sup>st</sup> Resolution and Order and the February 27<sup>th</sup> Order, on August 14, 2023, LUMA submitted its Comprehensive Quarterly Report of Fiscal Year 2023, for the Fourth Quarter ending June 30, 2023 (“Q4 Report”).

6. On September 18, 2023, this Energy Bureau issued a Resolution and Order whereby, among others, it noted a variance of \$162.0 million for Fiscal Year 2023 between projected federally funded capital expenditures and actual expenditures. In relevant part, this Energy Bureau granted LUMA ten business days to:

provide, on or before ten (10) business days from the notification of this Resolution and Order, the list of i) projects/activities that comprised the total FY 2023 Budget for the Federally Funded Capital Expenditures with the budgeted amounts, ii) which projects were done and the actual expenditures for the year, iii) which projects were not done, why, and if applicable, iv) which projects were substituted and how much were the expenditures for the year.

See September 18<sup>th</sup> Order, page 2.

7. On September 29, 2023, LUMA filed a *Motion for Brief Extension of Time to Comply with Order to Submit Breakdown of Budgeted Amounts and Expenditures for Federally Funded Projects in Fiscal Year 2023 and Supporting Explanations* whereby it requested a brief extension of time, until October 10, 2023, to submit to this Energy Bureau detailed variance explanations for activities that have had lower than budgeted actuals for federally funded Capital Expenditures.

8. On October 2, 2023, LUMA filed a *Partial Response to Resolution and Order of September 18, 2023, Request for Reconsideration and Submission of Motion by Genera*, whereby

in what is pertinent it complied with the other requirements of the September 18<sup>th</sup> Order: (a) explanations on the drivers of the variance between revenue forecasts and actuals; (b) explanations on how to address variances on shared services costs; and (c) GenCo's and HoldCo's Q4 Report.

9. LUMA hereby submits as *Exhibit 1* of this Motion, its responses to the remaining item of the September 18<sup>th</sup> Order relating to the budgeted amounts of federally funded programs. *Exhibit 1* includes an *Attachment 1* which LUMA is submitting in its native form to the Energy Bureau.

10. LUMA redacted specific portions of Attachment 1 of *Exhibit 1* and respectfully requests that those portions be kept confidential by this honorable Energy Bureau pursuant to the Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, and partially amended on September 16, 2016. In compliance with this policy, LUMA hereby submits its Memorandum of Law in support of its request for confidentiality setting forth the legal basis for which LUMA is entitled to file portions of Attachment 1 to *Exhibit 1* under the seal of confidentiality. As explained below, the Energy Bureau should protect certain information included in Attachment 1 from public disclosure as it contains CEII as defined in federal regulations and the Energy Bureau's Policy on Management of Confidential Information. *See* 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674; Energy Bureau's Policy on Management of Confidential Information.

## **II. Memorandum of Law in Support of request for Confidentiality**

### **A. Applicable Laws and Regulations to Submit Information Confidentially Before the Energy Bureau.**

The bedrock provision on the management of confidential information filed before this Energy 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 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 after appropriate evaluation the Energy Bureau determines 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.* § 1054n(a).

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.* § 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.* § 1054n(c).

Relatedly, in connection with the duties of electric power service companies, Section 1.10(i) of Act 17-2019 provides that electric power service companies shall provide the information requested by customers, except for confidential information under the Rules of Evidence of Puerto Rico.

Moreover, the Energy Bureau’s Policy on Confidential Information details the procedures a party should follow to request that a document or portion thereof be afforded confidential treatment. In essence, the referenced Policy requires identifying confidential information and filing 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 why each claim or designation conforms to the applicable legal basis of confidentiality. *Id.* at ¶ 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.* at ¶ 6.

The Energy Bureau policy on CEII is regulated by Section D of the Resolution issued on August 31, 2016, in Case No. CEPR-MI-2016-0009. Section D establishes that CEII is Validated Confidential Information and only authorized representatives may review such information:

2. Critical Energy Infrastructure Information (“CEII”)

The information designated by the [Energy Bureau] as Validated Confidential Information on the grounds of being CEII may be accessed by the parties’ authorized representatives only after they have executed and delivered the Nondisclosure Agreement.

Those authorized representatives who have signed the Non-Disclosure Agreement may only review the documents validated as CEII at the [Energy Bureau] or the Producing Party’s offices. During the review, the authorized representatives may not copy or disseminate the reviewed information and may bring no recording device to the viewing room.

*Id.* at § D (on Access to Validated Confidential Information).

Further on, Energy Bureau Regulation No. 8543, includes a provision for filing confidential information in proceedings before this Energy Bureau. To wit, Section 1.15 provides that:

[A] person has the duty to disclose information to the [Energy 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 [Energy 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.

Regulation No. 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings* § 1.15; *see also* Energy Bureau Regulation No. 9137 on *Performance Incentive Mechanisms* § 1.13 (addressing disclosure before the Energy Bureau of Confidential Information and directing compliance with Resolution CEPR-MI-2016-0009).

**B. Request for Confidentiality of Specific Portion of Attachment 1 to *Exhibit 1*.**

Attachment 1 to *Exhibit 1* is an *Excel* file with the list of improvement programs containing federal funding financial activity and the variance explanations requested by the Energy Bureau through the September 18<sup>th</sup> Order. Some of the explanations set forth in Column I of Attachment 1 include sensitive information referring to the security and infrastructure of the Puerto Rico Energy Transmission and Distribution System (“T&D System”). As such, the document includes CEII that, under relevant federal law and regulations, is protected from public disclosure. LUMA stresses that the information which LUMA redacted from the public version of Attachment 1 warrants confidential treatment to protect the T&D System from threats that could undermine the system and negatively affect electric power services to the detriment of the interests of the public, customers, and citizens of Puerto Rico.

Generally, CEII or critical infrastructure information is exempted from public disclosure because it involves assets and information which pose public security, economic, health, and safety risks. Federal Regulations on CEII, particularly 18 C.F.R. § 388.113, states that:

Critical energy infrastructure information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

- (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
- (ii) Could be useful to a person in planning an attack on critical infrastructure;
- (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and

- (iv) Does not simply give the general location of the critical infrastructure.

*Id.* at § 388.113(2).

Additionally, Section 388.113(3) defines critical electric infrastructure as a “system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.” *Id.* § 388.113(3). Finally, “[c]ritical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.” *Id.* § 388.113(4).

The Critical Infrastructure Information Act of 2002, 6 U.S.C. §§ 671-674, part of the Homeland Security Act of 2002, protects critical infrastructure information (“CII”).<sup>1</sup> CII is defined

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<sup>1</sup> Regarding the protection of voluntary disclosures of critical infrastructure information, 6 U.S.C. § 673, provides in pertinent part that CII:

- (A) shall be exempt from disclosure under the Freedom of Information Act;
- (B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;
- (C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;
- (D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this part, except—
  - (i) in furtherance of an investigation or the prosecution of a criminal act; or
  - (ii) when disclosure of the information would be--
    - (I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or
    - (II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the Government Accountability Office
- (E) shall not, be provided to a State or local government or government agency; of information or records;
  - (i) be made available pursuant to any State or local law requiring disclosure of information or records;
  - (ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information;or



as “information not customarily in the public domain and related to the security of critical infrastructure or protected systems . . . .” 6 U.S.C. § 671(3).<sup>2</sup>

As mentioned above, the Energy Bureau’s Policy on Confidential Information provides for the management of CEII. In several proceedings, this Energy Bureau has considered and granted requests to submit CEII under seal of confidentiality.<sup>3</sup> For example, in at least two proceedings on Data Security,<sup>4</sup> and Physical Security,<sup>5</sup> this Energy Bureau, *sua sponte*, conducted proceedings confidentially, recognizing the need to protect CEII from public disclosure.

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- (iii) be used other than for the purpose of protecting critical Infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act.
  - (F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

<sup>2</sup> CII includes the following types of information:

- (A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;
- (B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or
- (C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, construction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

<sup>3</sup> See e.g., *In re Review of LUMA’s System Operation Principles*, NEPR-MI-2021-0001 (Resolution and Order of May 3, 2021); *In re Review of the Puerto Rico Power Authority’s System Remediation Plan*, NEPR-MI-2020-0019 (order of April 23, 2021); *In re Review of LUMA’s Initial Budgets*, NEPR-MI-2021-0004 (order of April 21, 2021); *In re Implementation of Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, NEPR MI 2020-0012 (Resolution of January 7, 2021, granting partial confidential designation of information submitted by PREPA as CEII); *In re Optimization Proceeding of Minigrad Transmission and Distribution Investments*, NEPR-MI 2020-0016 (where PREPA filed documents under the seal of confidentiality invoking, among others, that a filing included confidential information and CEII); *In re Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, CEPR-AP-2018-0001 (Resolution and Order of July 3, 2019, granting confidential designation and PREPA’s request that included trade secrets and CEII); *but see* Resolution and Order of February 12, 2021 (reversing in part, grant of confidential designation).

<sup>4</sup> *In re Review of the Puerto Rico Electric Power Authority Data Security Plan*, NEPR-MI-2020-0017.

<sup>5</sup> *In re Review of the Puerto Rico Electric Power Authority Physical Security Plan*, NEPR-MI-2020-0018.

Additionally, this Energy Bureau has granted requests by LUMA to protect CEII in connection with LUMA's System Operation Principles. *See* Resolution and Order of May 3, 2021, table 2 on page 4, Case No. NEPR-MI-2021-0001 (granting protection to CEII included in LUMA's Responses to Requests for Information). Similarly, this Energy Bureau granted confidential designation to several portions of LUMA's Initial Budgets and Responses to Requests for Information in this proceeding and on LUMA's proposed System Remediation Plan.<sup>6</sup>

Recently, on June 30, 2023, the Energy Bureau entered a Resolution and Order in this proceeding granting confidential treatment to Appendix A of LUMA's Annual Budgets filing of May 15, 2023, in part because it contained CEII similar to that which protection is requested here. It is respectfully set forth that the Energy Bureau should apply that ruling to this filing and protect the CEII included in Attachment 1 because it includes information outlining challenges or vulnerabilities in security and infrastructure. Thus, the information could be useful to a person planning an attack on the transmission and distribution facilities, as they enable a person to identify weaknesses that could be used to compromise the electric power services in Puerto Rico.

LUMA respectfully submits that the specific portions of Attachment 1 detailed below should be designated CEII. This designation is a reasonable and necessary measure to protect critical infrastructure and enable LUMA to leverage the information and assessment of critical infrastructures without external threats. Given the importance of ensuring the safe and efficient operation of the T&D System, LUMA respectfully submits that the information detailed below be

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<sup>6</sup> *See* Resolution and Order of April 22, 2021, on Initial Budgets, table 2 on pages 3-4 and Resolution and Order of April 22, 2021, on Responses to Requests for Information, table 2 at pages 8-10, Case No. NEPR-MI-2021-0004; Resolution and Order of April 23, 2021, on Confidential Designation of Portions of LUMA's System Remediation Plan, table 2 on page 5, and Resolution and Order of May 6, 2021, on Confidential Designation of Portions of LUMA's Responses to Requests for Information on System Remediation Plan, table 2 at pages 7-9, Case No. NEPR-MI-2020-0019.

maintained confidential to safeguard the T&D System's integrity and protect it from external threats.

**C. Identification of Confidential Information.**

In compliance with the Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009, below is a table summarizing the hallmarks of this request for confidential treatment.

	<b>Document or file</b>	<b>Pages in which Confidential Information is Found, if applicable</b>	<b>Summary of Legal Basis for Confidentiality Protection, if applicable</b>	<b>Date Filed</b>
1	Attachment 1 of Exhibit 1	Portions of Column I, Rows 14, 21, 24, 25 and 27.	Critical Energy Infrastructure Information 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674.	October 10, 2023

**WHEREFORE**, LUMA respectfully requests that this honorable Energy Bureau **take notice** of the aforementioned and **deem** LUMA in compliance with those portions of the September 18<sup>th</sup> Order requiring it to submit the information on federally funded capital costs by project with supporting information regarding federally funded capital projects for FY2023.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 10<sup>th</sup> day of October, 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 its attorney of record: [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law) and to Genera PR LLC, through its counsel of record Jorge Fernández-Reboredo, [jfr@sbglaw.com](mailto:jfr@sbglaw.com) and Alejandro López Rodríguez, [alopez@sbglaw.com](mailto:alopez@sbglaw.com).



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*Exhibit 1*  
LUMA's Response to September 18th Order on Federally Funded Capital Expenditures  
Including *Attachment 1* submitted by email in Excel native form



# Review of Quarterly Report for the Fourth Quarter of Fiscal Year 2023

NEPR-MI-2021-0004

Second Set of Responses to September 18, 2023 Requests

October 10, 2023

## List of Responses and Attachments

Response ID	Document Type	Response Subject
ROI-LUMA-MI-2021-0004-20230918-PREB-001	Response in PDF	Federally Funded CapEx
ROI-LUMA-MI-2021-0004-20230918-PREB-001_Attachment 1	Attachment in Excel	Federally Funded CapEx

# Review of Quarterly Report for the Fourth Quarter of Fiscal Year 2023

## NEPR-MI-2021-0004

### Response: ROI-LUMA-MI-2021-0004-20230918-PREB-001

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#### SUBJECT

Federally Funded Capital Expenditures

#### REQUEST

The Energy Bureau ORDERS LUMA to provide, on or before ten (10) business days from the notification of this Resolution and Order, the list of

- i. projects/activities that comprised the total FY2023 Budget for the Federally Funded Capital Expenditures with the budget amounts,
- ii. which projects were done and the actual expenditures for the year,
- iii. which projects were not done, why, and if applicable,
- iv. which projects were substituted, and how much were the expenditures for the year.

#### RESPONSE

Please refer to ROI-LUMA-MI-2021-0004-20230918-PREB-001\_Attachment 1 for a list outlining federal funded program spending and the requested information on activities completed during FY2023.

Information presented in ROI-LUMA-MI-2021-0004-20230918-PREB-001\_Attachment 1 shows year-to-date actuals as filed on the LUMA Quarterly Report for the Fourth Quarter of FY2023. This data is preliminary and subject to revision upon completion of the year-end financial closing process. As would be reasonably expected, preliminary financial information for the period may differ materially from the final numbers. LUMA looks forward to providing a complete and final Annual Report for FY2023 by October 30, 2023, that will reinforce our company's commitment to sound and transparent budgeting and reporting as we continue our mission to build a better energy future for all of Puerto Rico.