

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

NEPR Received: Dec 4, 2023 8:37 PM

IN RE:

ENERGY EFFICIENCY AND DEMAND
RESPONSE TRANSITION PERIOD
PLAN

CASE NO.: NEPR-MI-2022-0001

SUBJECT: Memorandum of Law in Support of Confidential Treatment of Exhibit 1 to the “Motion to File Proof of Customer Enrollment and Additional Executed Master Aggregation Agreements and Evidence on Capability to Call Emergency DR Events and Request for Confidentiality” Filed by LUMA on November 22, 2023

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
EXHIBIT 1 TO THE “MOTION TO FILE PROOF OF CUSTOMER ENROLLMENT
AND ADDITIONAL EXECUTED MASTER AGGREGATION AGREEMENTS AND
EVIDENCE ON CAPABILITY TO CALL EMERGENCY DR EVENTS AND REQUEST
FOR CONFIDENTIALITY” FILED BY LUMA ON NOVEMBER 22, 2023**

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. Relevant Procedural History

1. On August 11, 2023, the Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order (“August 11th Order”) in which, among others, it ordered LUMA to file: (a) on or before August 23, 2023, for the Energy Bureau’s approval, the associated cost related to the compensation to be offered to the Demand Response (“DR”) Aggregators and/or ratepayers that participate in the Emergency Battery DR Program, now also known as the Customer Battery Energy Sharing (“CBES”) Program, under

LUMA's Energy Efficiency and DR Transition Period Plan¹ that was approved by the Energy Bureau on February 16, 2023² to be recovered through the Purchased Power Charge Adjustment ("PPCA"); (b) within two weeks of the Energy Bureau's approval of the compensation to the participants, proof of publication of the CBES Program terms, established agreements with DR Aggregators, and enrolled customers in the program; and (c) within two weeks thereafter, proof of customer enrollment and documentation showing LUMA's capability to call Emergency DR events. *See* August 11th Order on page 3.

2. In compliance with the August 11th Order, on August 23, 2023, LUMA submitted to the Energy Bureau the proposed estimated costs associated with the CBES Program, including the cost related to the compensation to be offered to the DR Aggregators that participate in the CBES Program to be recovered through the PPCA. *See Motion to Submit Costs Associated with Emergency DR Program In Compliance with Resolution and Order of August 11, 2023, and Request for Confidential Treatment filed August 23, 2023* ("August 23rd Motion") and Exhibit 1. In addition, LUMA provided a proposed timeline to achieve the various tasks related to the implementation of the CBES Program. *See id.* Exhibit 1 at page 9.

3. On August 29, 2023, the Energy Bureau issued a Resolution and Order ("August 29th Resolution and Order") determining, among other matters, to amend the timeline for CBES Program milestones and ordering LUMA to file, on or before September 22, 2023, proof of executed aggregation agreements for the CBES Program and file, on or before October 13, 2023, proof of customer enrollment and the capacity to call Emergency DR events. *See* August 29th Resolution and Order on page 5.

¹ LUMA filed this document with the Energy Bureau on June 21, 2022 in case NEPR-MI-2021-0006, *In Re: Demand Response Plan Review, Implementation and Monitoring*.

² Via Resolution and Order of that date in the instant proceeding.

4. On September 20th 2023, LUMA informed the Energy Bureau that it had launched the CBES webpage, published the CBES Guidelines and submitted the form of the Master Aggregation Agreements to interested DR Aggregators. *See Informative Motion and Request for Extension of Deadline To File Proof of Execution of Aggregation Agreements and Approval of Revised Emergency DR Program Budget* of that date (“September 20th Motion”) on pages 7-8. LUMA also requested additional time to submit proof of the execution of the Master Aggregation Agreements given delays due to questions from DR Aggregators regarding some of the provisions of the Master Aggregation Agreement which LUMA was working on resolving and provided a revised timeline for the activities to implement the CBES Program. *See id.* Exhibit 1.

5. On September 29, 2023, LUMA filed with the Energy Bureau a motion informing on its efforts to allow DR Aggregators to evaluate and sign the Master Aggregation Agreement. *See Informative Motion Regarding Aggregation Agreements* of that date on page 4.

6. On October 13, 2023, LUMA filed with this Energy Bureau proof of execution of Master Aggregation Agreements and an update on customer enrollment. *See Motion to Submit Proof of Execution of Master Aggregation Agreements and Provide Update on Customer Enrollment* of that date (“October 13th Motion”).

7. On November 22, 2023, LUMA filed with this Energy Bureau proof of customer enrollment and LUMA’s capability to call Emergency DR Events and copy of three additional executed Master Aggregation Agreements. *See Motion to File Proof of Customer Enrollment and Additional Executed Master Aggregation Agreements and Evidence on Capability to Call Emergency DR Events and Request for Confidentiality* (“November 22nd Motion) and its Exhibits 1 through 4.

8. As proof of customer enrollment, LUMA submitted in the November 22nd Motion as Exhibit 1 thereto (“November 22 Exhibit 1”) an Excel spreadsheet containing the information provided by the DR Aggregators sent to LUMA to enroll customers (the “Enrollment Spreadsheet”), which document was submitted to the Energy Bureau via email. LUMA requested that the Energy Bureau receive and maintain portions of the November 22 Exhibit 1 under seal of confidentiality 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 (“Energy Bureau’s Policy on Confidential Information”), and, accordingly, LUMA submitted redacted and unredacted (confidential) versions of the November 22 Exhibit 1. LUMA also informed it would be submitting within ten (10) days a Memorandum of Law in Support of its request.

9. As per the November 22nd Motion, LUMA submits this Memorandum of Law setting forth the legal basis for which LUMA is entitled to tender the November 22 Exhibit 1 under seal of confidentiality.

II. Memorandum of Law in Support of Request for Confidentiality

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

10. 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 Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the [Energy Bureau] 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.* §1054n(a).

11. Access to 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).

12. Relatedly, in connection with the duties of electric power service companies, Section 1.10 (i) of Act 17-2019 states that electric power service companies shall “provide the documents and information as requested by customers, “except for: (i) confidential information in accordance with the Rules of Evidence of Puerto Rico, ...]and (viii) ***issues that should be maintained confidential in accordance with any confidentiality agreement***, provided, that such agreement is not contrary to public interest....” (Emphasis added.).

13. Moreover, the Energy Bureau’s Policy on Management of 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 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 a “redacted” or “public version” and an “unredacted” or “confidential” version of the document that contains confidential information. *Id.* at ¶ 6.

14. The aforementioned Energy Bureau policy on the management of confidential information in procedures states the following with regard 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).

15. 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. 80-2011.³ Trade secrets include, but are not limited to, processes, methods, mechanisms, manufacturing processes, formulas, projects, or patterns to develop machinery and lists of specialized clients that may afford an advantage to a competitor. *See*

³ Relatedly, Rule 513 of the Rules of Evidence of Puerto Rico provides that the owner of a trade secret may invoke the privilege to refuse to disclose, and to prevent another person, from disclosing trade secrets, provide that these actions do not tend to conceal fraudulent actions or lead to an injustice. 32 P.R. Laws Annot. Ap. VI, R 513. If a court of law mandates disclosure of a trade secret, precautionary measures should be adopted to protect the interests of the owner of the trade secret. *Id.*

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). *See* Act 122-2019, Articles 4 (ix) and (x) and (xi).

16. 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).

17. Energy Bureau Regulation No. 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings*, also 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 according to [...] Article 6.15 of Act No. 57-2015, as amended.”

B. Request for Confidentiality

18. The Enrollment Spreadsheet submitted as proof of customer enrollment constituting the November 22 Exhibit 1 contains information of the Puerto Rico Electric Power Authority’s (“PREPA”) Transmission and Distribution System (“T&D System”) customers in the

form of the customer’s name, customer address, premise identification number, and customer account number, appearing in columns H, I, G and J, respectively, of this spreadsheet. LUMA is required to maintain this information confidential pursuant to the provisions of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“T&D OMA”). In particular, this information constitutes “Owner Personal Information” under the T&D OMA, defined in pertinent part as “any and all personally identifiable information, in any form, collected or provided to [LUMA] [...] in connection with the provision of O&M Services⁴ or services under [the T&D OMA] and that, alone or in combination with other information, uniquely identifies a current [...] T&D System Customers⁵ (e.g., names, addresses, telephone numbers, other information in the Customer Database⁶ or any other personally identifiable information as otherwise defined under [applicable law]) [...]” *See* T&D OMA, Section 1.1 (definition of “Owner Personal Information”) (footnotes added). The T&D OMA provides that “Owner Personal Information shall be considered Confidential Information of Owner and shall at all times remain the Intellectual Property of Owner”. *See id.* Section 5.15(b). LUMA is required to “(A) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information of [Owner], and (B) use all Confidential Information of [Owner] solely for the purposes of performing its obligations under the [OMA and other specified agreements contemplated under the OMA]”. *See id.* Section 13.2(a)(ii).

⁴ This term is defined as the following services that LUMA is required to provide under the T&D OMA: (i) provide management, operation, maintenance, repair, restoration and replacement and other related services for the T&D System, in each case that are customary and appropriate for a utility transmission and distribution system service provider, including the services set forth in [Article 5 (*O&M Services*) of the T&D OMA with some exclusions] [...] and Annex I (*Scope of Services*) [of the T&D OMA], and (ii) establish policies, programs and procedures with respect thereto. *See* T&D OMA, Section 5.1.

⁵ This term is defined as the “customers of the T&D System”. *See id.* Section 1.1 (definition of T&D Customers).

⁶ This term is defined, in pertinent part, as “a computer database containing information related to T&D Customers [...]” *See id.* Section 5.15(a).

19. In addition, this information should be maintained confidentially in the context that these reveal details of customers' personal information and that its protection is in the public interest and aligned with Puerto Rico's legal framework on privacy which protects from the disclosure of personal information. *See, e.g.*, Const. ELA, Art. II, Sections 8 and 10 protect the right to control personal information and distinctive traits, which applies *ex proprio vigore* and against private parties. *See also e.g. Vigoreaux v. Quiznos*, 173 DPR 254, 262 (2008); *Bonilla Medina v. P.N.P.*, 140 DPR 294, 310-11 (1996), *Pueblo v. Torres Albertorio*, 115 DPR 128, 133-34 (1984). *See also* Act 122-2019, Article 4(vi) (which provides, as an exception to the rule on public disclosure, information the disclosure of which could invade the privacy of third parties or affect their fundamental rights).

20. Furthermore, the DR Aggregator's identifying information included in column B of the Enrollment Spreadsheet in the November 22 Exhibit 1 also warrants confidentiality protection. When coupled with a client's equipment information, which is included in columns K, L and M of the Enrollment Spreadsheet, this information, if disclosed, would adversely affect a DR Aggregator's competitive advantage- that is, if gathered and analyzed by a competitor, this information could be used as competitive intelligence by the competitor and may adversely affect the DR Aggregator's competitive advantage. Therefore, LUMA understands this information is a trade secret of the DR Aggregator, which is a type of information protected from disclosure under the Master Aggregation Agreement. Pursuant to the Master Aggregation Agreement, confidential information must be kept in strict confidence by the parties and the parties must exercise all reasonable steps to protect it, among other requirements to prevent disclosure of this information. It is also in the best interest of the CBES Program that this information be maintained confidential

to ensure the smooth and successful functioning of this program by avoiding potential competitive controversies among DR Aggregators.

21. It is respectfully submitted that the redaction of the aforementioned information does not affect the public’s or the Energy Bureau’s review of the present filing nor interfere with processes before this Energy Bureau. Therefore, on balance, the public interest to protect privacy and to ensure the success of the CBES Program weighs in favor of protecting the relevant portions of the Enrollment Spreadsheet.

C. Identification of Confidential Information

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

Document	Description	Columns in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
November 22 Exhibit 1	Excel spreadsheet: Enrollment Spreadsheet with information on customer enrollment	Columns G, H, I, and J.	Section 1.10 (i) of Act 17-2019 (information to be maintained confidential pursuant to confidentiality agreement (that is, the T&D OMA) Right to privacy (<i>see, e.g.</i> , Const. ELA, Art. II, Sections 8 and 10)	November 22, 2023

Document	Description	Columns in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
November 22 Exhibit 1	Excel spreadsheet: Enrollment Spreadsheet with information on customer enrollment	Column B	Section 1.10 (i) of Act 17-2019 (information to be maintained confidential pursuant to confidentiality agreement (that is, the Master Aggregation Agreement))	November 22, 2023

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned, **grant** confidential treatment to portions of the proof of enrollment of customers in the CBES Program submitted on November 22, 2023 as *Exhibit 1*, and **deem** LUMA in compliance with the requirement in the August 29th Resolution and Order.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 4th day of December 2023.

We hereby certify that we filed this Motion using the electronic filing system of this Energy Bureau and that we will send an electronic copy of this Motion to the attorney for PREPA at jmarrero@diazvaz.law and lionel.santa@prepa.pr.gov; the Independent Office for Consumer Protection at hrivera@jrsp.pr.gov; and agraitfe@agraitlawpr.com, info@sesapr.org, bfrench@veic.org, shanson@veic.org, evand@sunrun.com, jordgraham@tesla.com, forest@cleanenergy.org, customerservice@sunnova.com, javruea@sesapr.org, pjcleanenergy@gmail.com, and mrios@arroyorioslaw.com.



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