

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

IN RE:

IMPLEMENTATION OF THE
PUERTO RICO ELECTRIC POWER
AUTHORITY INTEGRATED
RESOURCE PLAN AND MODIFIED
ACTION PLAN

CASE NO.: NEPR-MI-2020-0012

SUBJECT: Motion to Submit Corrected Exhibit 1 to the “Motion to Submit Executed Interconnection Agreements and Request for Confidential Treatment” Filed by LUMA on December 7, 2023 and Memorandum of Law in Support of Confidential Treatment of Exhibit 1

MOTION TO SUBMIT CORRECTED EXHIBIT 1 TO “MOTION TO SUBMIT EXECUTED INTERCONNECTION AGREEMENTS AND REQUEST FOR CONFIDENTIAL TREATMENT” FILED BY LUMA ON DECEMBER 7, 2023 AND MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF EXHIBIT 1

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. Procedural History

1. On December 6, 2023, LUMA filed with this honorable Puerto Rico Energy Bureau (“Energy Bureau”) a motion informing, among others, that, as of November 30, 2023, LUMA had executed thirteen (13) Interconnection Agreements with Tranche 1 proponents and one (1) non-Tranche 1 proponent, all identified in an Exhibit 1 to that motion. *See Informative Motion on Execution of Tranche 1 Interconnection Agreements, Request for Determination Regarding Interconnection Costs and Request for Confidential Treatment* filed on December 6, 2023

(“December 6th Motion”). LUMA also informed that it would be providing copy of these executed agreements to the Energy Bureau in the coming days.

2. On December 7, 2023, LUMA filed with the Energy Bureau a *Motion to Submit Executed Interconnection Agreements and Request for Confidential Treatment* (“December 7th Motion”) whereby it submitted fourteen (14) executed Interconnection Agreements as Exhibit 1 (“*December 7th Exhibit 1*”) to the December 7th Motion (the “Interconnection Agreements”). This submittal also included First Amendments to twelve (12) executed Interconnection Agreements which were executed on the same date as the latter (the “First Amendments”). In the December 7th Motion, LUMA requested that the *December 7th Exhibit 1* be maintained under seal of confidentiality and informed the Energy Bureau that a Memorandum of Law in support of the request for confidentiality and the redacted version of Exhibit 1 would be submitted within the next ten (10) days.

3. In preparing the redacted versions of the Interconnection Agreements, it came to our attention that, by inadvertence, one of the Interconnection Agreements submitted was not the final executed version. LUMA herein re-submits the *December 7th Exhibit 1* with all Interconnection Agreements in final executed version. *See Exhibit 1.*

4. As per the December 7th Motion, and 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, LUMA submits this Memorandum of Law setting forth the legal basis for which LUMA is entitled to tender the *December 7th Exhibit 1* under seal of confidentiality and the redacted version of the *December 7th Exhibit 1* as updated herein. *See Exhibit 2.*

II. Memorandum of Law in Support of Request for Confidentiality

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

5. 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).

6. 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).

7. 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.).

8. 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.

9. 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.

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. Section D (on Access to Validated Confidential Information).

10. 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. 80-2011.¹ 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* 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 Open Government Data Act, 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).

11. 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).

12. 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

13. LUMA respectfully submits that the following information in Exhibit 1 should be maintained confidential for the reasons indicated below: Individuals’ personal circumstances (e.g., marital status and place of residency) and Employer Identification or Tax Identification numbers appearing in the pre-ambles and/or the signature pages of the Interconnection Agreements and the First Amendments; the email addresses in Section 15 of the Interconnection Agreements; and the signatures of individuals on the signature pages of the Interconnection Agreements and the First Amendments. The protection of this information 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). In addition, the Puerto Rico Open Government Data Act provides that the following information is excepted from public disclosure: information the disclosure of which could invade the privacy of third parties or affect their fundamental rights, as well as any type of information related to the street address, telephone number, emergency contact information, social security number, credit card number, tax and/or financial information, bank activity, confidential information of private third parties, trade secrets, tax returns, debt, or pin number, which is collected or maintained by a governmental body. *See* Act 122-2019, Articles 4(vi) and (xi).

14. The *December 7th Exhibit 1* also contains portions of CEII that, under relevant federal law and regulations, are protected from public disclosure. Specifically, most Interconnection Agreements include in Appendix C-1 single line diagrams showing the electrical interconnection covered by these agreements. In addition, some Interconnection Agreements include, either in Exhibit C-1 or Exhibit H, the GPS coordinates of the substation where the point of interconnection will be located. This information warrants confidential treatment to protect critical infrastructure 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. In several proceedings, this Energy Bureau has considered and granted requests by PREPA to submit CEII under seal of confidentiality. In at least two Data Security and Physical Security proceedings, this Energy Bureau, *motu proprio*, has conducted proceedings confidentially, thereby recognizing the need to protect CEII from public disclosure.

15. 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, in the proceedings on LUMA's proposed Initial Budgets and System Remediation Plan, this Energy Bureau granted confidential designation to several portions of LUMA's Initial Budgets and Responses to Requests for Information. *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 on 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.

16. As mentioned above, the Energy Bureau's Policy on Management of Confidential Information provides for the management of CEII. It directs that the parties' authorized representatives access information validated as CEII only after executing and delivering a Non-Disclosure Agreement.

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

18. Additionally, “[c]ritical electric infrastructure means 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.* 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.*

19. The Critical Infrastructure Information Act of 2002, 6 U.S.C. §§ 671-674 (2020), part of the Homeland Security Act of 2002, protects critical infrastructure information (“CII”).²

² Regarding 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
 - (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.

CII is defined 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).³

20. The identified portions of the *December 7th Exhibit 1* include interconnection line diagrams and the express coordinates to power transmission facilities (18 C.F.R. § 388.113(iv)) which provide information on engineering, vulnerability, or detailed designs about proposed or existing critical infrastructure relating to the transmission of electricity, as well as the location of transmission facilities, that, if disclosed, could reveal areas that would be vulnerable were a third-party plan to attack PREPA’s transmission and distribution system. This information is not common knowledge and is not made publicly available.

21. Given the importance of ensuring the safe and efficient operation of the generation assets and the T&D System, LUMA respectfully submits that mentioned line diagrams and coordinates constitute CEII that should be maintained confidential to safeguard their integrity and protect them from external threats. On balance, the public interest in protecting CEII weighs in favor of protecting the relevant portions of the *December 7th Exhibit 1* with CEII from disclosure.

22. The *December 7th Exhibit 1* also contains commercially sensitive information of the type that LUMA keeps and maintains confidential as part of its business dealings and to protect

³ 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.

its competitive procurement processes, as well as information on business processes, methods, and mechanisms. Specifically, each of the Interconnection Agreements include, in their Exhibit B, the estimated costs for the interconnection works based on the Interconnection Studies conducted by LUMA and the final interconnection costs based on the proposal obtained from the selected proponent in LUMA's procurement for the EPC contractor for these works ("EPC Procurement"). This information also appears in Exhibit H of one of the Interconnection Agreements. The EPC Procurement has not yet concluded. Although LUMA has completed the request for proposal phase of the EPC Procurement and selected a proponent, the proponents have not been notified yet of the selection because the determination to proceed with the interconnection works and the scope of these works is contingent on the execution of the Interconnection Agreements and the issuance by the Tranche 1 proponents of subsequent notices to proceed with the interconnection works. In addition, the request for proposals ("RFP") of this procurement requires that information on the proposals be maintained confidential during the procurement process. Therefore, it is respectfully submitted that the disclosure of the mentioned amounts at this time will adversely impact the integrity of the ongoing EPC Procurement process and will be contrary to the provisions of the RFP document.⁴

23. Finally, one of the Interconnection Agreements includes in Exhibit H copy of part of the executive summary of interconnection studies conducted by LUMA which LUMA respectfully submits should also be maintained in confidence. LUMA respectfully submits that

⁴ The Energy Bureau has in the past taken action to protect the integrity in a procurement process. For example, through its Resolution and Order of February 2, 2022 ("February 2nd Order") in instant case, this honorable Energy Bureau established that confidential treatment of information related to the Tranche 1 procurement was required pursuant to Sections 4(g) -6- and 10.2 of the Joint Regulations 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 8815 of October 11, 2016 ("Regulation 8815"), and that only once the procurement is completed, shall it be made public. *See* the February 2nd Order, footnote 28. This Energy Bureau's action to maintain the requested information confidential in this case would also be consistent with the interest of maintaining the purity of procurement processes.

this is an original business document developed using LUMA's business expertise. It is the type of business document showing processes, methods, and mechanisms, which is protected under Act 80-2011. It is important to note that Act 80-2011 has been interpreted broadly by the Puerto Rico Supreme Court to protect information belonging to a business such as LUMA, that are kept privately to protect the orderly conduct of business and to avoid competitive harms. *See Ponce Adv. Med. v. Santiago González*, 197 DPR 891 (2017).

24. It is respectfully submitted that the redaction of all of the confidential information discussed above 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, protect CEII, ensure the integrity of an ongoing procurement, and avoid competitive harms weighs in favor of protecting the relevant portions of the *December 7th Exhibit 1* from disclosure.

C. Identification of Confidential Information

25. In compliance with the Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009, the table below summarizes the hallmarks of this request for confidential treatment⁵.

⁵ Given that the Interconnection Agreements and the First Amendments have similar content and organization, the confidential information for which confidentiality is being sought herein generally appears in the same sections of these agreements. Therefore, this table is applicable to all agreements.

Document	Description of Confidential Information	Section in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
<i>December 7th Exhibit I</i> (as updated by Exhibit 1 of this Motion)	<ul style="list-style-type: none"> -Employer Identification number or Tax Identification number -Personal circumstances -Email addresses 	<ul style="list-style-type: none"> -Preamble⁶ of Interconnection Agreements and First Amendments -Appendix E⁷ of Interconnection Agreements -Section 15 (Notices) of Interconnection Agreements -Signature Page of Interconnection Agreements and First Amendments 	<ul style="list-style-type: none"> Right to privacy (<i>see, e.g.</i>, Const. ELA, Art. II, Sections 8 and 10) Exceptions to disclosure under Puerto Rico Open Government Data Act, Act 122-2019, Articles 4(vi) and (xi) 	December 7 and 21, 2023
<i>December 7th Exhibit I</i> (as updated by Exhibit 1 of this Motion)	Estimated Costs and/or payments for interconnection works (“T&D System Operator’s Interconnection	Appendix B of Interconnection Agreements	LUMA procurement process information that has not been disclosed to protect the	December 7 and 21, 2023

⁶ Some agreements only include the Employer Identification number or Tax Identification number in the signature page.

⁷ The confidential information appears in Appendix E of only a few Interconnection Agreements.

Document	Description of Confidential Information	Section in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
1 of this Motion)	Facilities Works Payment”)	Appendix H ⁸ of Interconnection Agreements	integrity of a competitive process and subject to a confidentiality requirement in the RFP	
<i>December 7th Exhibit 1</i> (as updated by Exhibit 1 of this Motion)	Diagrams	Appendix C-1 of Interconnection Agreements	Critical Energy Infrastructure Information, 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674.	December 7 and 21, 2023
<i>December 7th Exhibit 1</i> (as updated by Exhibit 1 of this Motion)	Executive summary of interconnection studies conducted by LUMA	Appendix H of one Interconnection Agreement (entire Appendix)	This is an original business document developed using LUMA’s business expertise. It is the type of business document showing processes, methods, and mechanisms, which is	December 7 and 21, 2023

⁸ This type of information appears in Appendix H in only one Interconnection Agreement.

Document	Description of Confidential Information	Section in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
			protected under Act 80-2011.	
<i>December 7th Exhibit 1</i> (as updated by Exhibit 1 of this Motion)	GPS Coordinates	-Appendix C-I of Interconnection Agreements -Appendix H ⁹ of one Interconnection Agreement	Critical Energy Infrastructure Information, 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674.	December 7 and 21, 2023

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned, **accept** the corrected *December 7th Exhibit 1* included in Exhibit 1 herein in substitution of the version submitted on December 7, 2023; **accept** the Memorandum of Law in Support of Confidential Treatment of the *December 7th Exhibit 1* (as updated herein in Exhibit 1); and **grant** confidential treatment to portions of the December 7th Exhibit 1 (as updated herein in Exhibit 1) as described herein.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 21st day of December 2023.

I hereby certify that I filed this motion using the electronic filing system of this Puerto Rico Energy Bureau and that a copy of this motion was notified by email to lionel.santa@prepa.com,

⁹ The coordinates appear in Appendix H in only one Interconnection Agreement.

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Exhibit 1

Corrected December 7th Exhibit 1

[Submitted Via Sharefile]

Exhibit 2

Redacted December 7th Exhibit 1 (as updated herein)

[Submitted via Sharefile]