

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

NEPR

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IN RE: REVIEW OF LUMA'S
INITIAL BUDGETS

CASE NO. NEPR-MI-2021-0004

**SUBJECT: Memorandum of Law in Support
of Request for Confidential Treatment of
Supporting Workpapers to LUMA's
Proposed T&D Budgets for FY2025**

**MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL
TREATMENT OF SUPPORTING WORKPAPERS TO LUMA'S PROPOSED
TRANSMISSION AND DISTRIBUTION BUDGETS FOR FY2025**

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. Introduction

LUMA filed before this Puerto Rico Energy Bureau (“Energy Bureau”) a *Request for Approval of T&D Budgets and Submission of GenCo Budgets for FY2025 and Budget Allocations for the Electric Power System* dated May 24, 2024 (“May 24th Budgets Submission”). In what is relevant to this Memorandum of Law, LUMA submitted the proposed budgets for the Transmission and Distribution System (“T&D Budgets”) for FY2025, developed by LUMA.

In compliance with a Resolution and Order issued by this Energy Bureau on April 9, 2024 (“April 9th Order”)¹, LUMA also submitted the supporting workpapers to the T&D Budgets. The FY2025 workpaper on Operating Expenditures (*FY25 Budget – Working Papers – Operating*

¹ On April 9, 2024, this Honorable Energy Bureau issued a Resolution and Order (“April 9th Order”) whereby it ordered LUMA to submit “all supporting materials and applicable workpapers” used to develop the proposed FY2025 Annual Budgets together with the budget submission. April 9th Order, pg. 1; *See also* March 25, 2022 Resolution and Order, pg. 3.

Expenditures.xlsx) was submitted under seal of confidentiality given that it includes sensitive commercial information and trade secrets. LUMA also submitted a public redacted version of the above referenced workpaper.

In the May 24th T&D Budgets Submission, LUMA also informed that in compliance with the Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, as amended on September 21, 2016 ("Energy Bureau's Policy on Management of Confidential Information"), under separate cover and expediently, within the next ten days, it would submit a memorandum of law in support of its request to file the FY2025 Operating Expenditures workpapers under seal of confidentiality.

In compliance with the Energy Bureau's Policy on Management of Confidential Information, LUMA submits this memorandum of law that identifies and explains the legal basis for the confidential treatment of the FY2025 Operating Expenditures workpaper that was filed with this Energy Bureau together with the May 24th T&D Budgets Submission. It is respectfully submitted that the entirety of the referenced workpaper identified as confidential, should be protected per Article 6.15 of Law 57-2014, known as the Puerto Rico Energy Transformation and Relief Act and the Energy Bureau's Policy on Management of Confidential Information.

II. Applicable Laws and Regulation to submit information confidentially before the Energy Bureau.

Section 6.15 of Act 57-2014 regulates the management of confidential information filed before this Energy Bureau. 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 Commission to treat such information as such" 22 LPRA § 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.*, Section 6.15 (a).

In connection with the duties of electric power service companies, Sections 1.10 (i) of Act 17-2019 further provide that electric power service companies shall submit information requested by customers, except for confidential information in accordance with the Rules of Evidence of Puerto Rico. 22 LPRA § 1141i.

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.” Section 6.15(b) of Act 57-2014, 22 LPRA § 1054n. 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).

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 Energy Bureau’s Policy on Confidential Information 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 16, 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.

The Energy Bureau’s Policy on Confidential Information also states the following with regards 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).

Relatedly, Energy Bureau Regulation No. 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings*, includes a provision for filing confidential information in adjudicatory proceedings before this honorable 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.”

III. Request for Confidentiality and Supporting Arguments: Sensitive Commercial Information

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. § 4132, Section 3 of Act 80-2011. (Emphasis added).

Trade secrets include, but are not limited to, processes, methods and 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* Section 4 of the 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 and (2) trade secrets protected by a contract, statute or judicial decision). *See* Act 122-2019, Sections 4 (ix) and (x), 3 LPR § 9894.

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); *see also Next Step Medical Co. v. MCS Advantage Inc.*, KLCE201601116, 2016 WL 6520173 (P.R. Court of Appeals, September 13, 2016) (holding that in Puerto Rico, what constitutes trade secrets is evaluated applying a broad definition). A trade secret includes ***any and all information*** (i) from which a real or potential value or economic advantage may be derived; (ii) that is not common knowledge or accessible through other means; and (iii) as to which reasonable security measures have been adopted to keep the information confidential. *Ponce Adv. Medical*, 197 DPR at 906.

The FY2025 Operating Expenditures workpaper, filed with the May 24th T&D Budgets Submission, includes sensitive commercial information on expenditures and estimations and assumptions on costs that LUMA has not shared with third parties and maintains confidentially. The commercially sensitive and confidential information includes LUMA’s original work product with estimations, methods and assumptions on allocations of costs for operational expenditures and information on expenditure categories for FY2025. The information should be kept confidential to secure the orderly conduct of future acquisitions and competitive procurement processes. Disclosure of the information will stifle future competitive processes and potentially increase costs since bidders and suppliers will have had the benefit of seeing LUMA’s estimates on expenditures and assumptions on costs of these goods and services. Also, the confidential workpapers constitute LUMA’s original work product which LUMA does not share publicly with third parties to protect the orderly conduct of its business.

The table below identifies the information that was filed under seal of confidentiality and the grounds for the request for confidential treatment:

Identification of Confidential Information	Summary of Legal Basis for Confidentiality Protection
FY25 Budget – Working Papers – Operating Expenditures.xlsx	Sensitive Commercial Information and Trade Secrets under Act 80-2011

It is important to note that in a Resolution and Order of April 21, 2021, with the subject *Request to Submit Portions of LUMA’s Responses to Requests for Information Confidentially, and Memorandum of Law in Support Thereof* (“April 21st Order”), this Energy Bureau granted confidential treatment to documents filed in connection with LUMA’s Initial Budgets that contain

similar information to that found in workpapers filed with the May 24th T&D Budgets Submission. See April 21st Order at page 10. More recently, this Energy Bureau has repeatedly maintained confidential designation of LUMA workpapers, submitted in connection with LUMA's Annual Budgets for FY2023 and FY2024, which also contained analogous information to that submitted in the workpapers filed with the May 24th T&D Budgets Submission.²

LUMA hereby requests that this Energy Bureau apply to the FY2025 Operating Expenditures workpapers, filed with the May 24th T&D Budgets Submission, the same ruling and designation of confidentiality that this Energy Bureau applied in the April 21st Order and to LUMA's April 8, 2022 and June 5, 2023 confidentiality filings. The confidential portions of the workpapers that were submitted with the May 24th T&D Budgets Submission, contain sensitive commercial information regarding LUMA's estimations and assumptions on costs.

WHEREFORE, LUMA respectfully requests this Honorable Bureau **grant** LUMA's request for confidential treatment of the FY2025 Operating Expenditures workpaper that was filed with the May 24th T&D Budgets Submission.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 31st day of May 2024.

We hereby certify that this motion was filed using the electronic filing system of this Energy Bureau. We also certify that copy of this motion memorandum will be notified to the Puerto Rico Electric Power Authority, through its attorneys of record: Mirelis Valle-Cancel, mvalle@gmlex.net, and Alexis G. Rivera Medina, arivera@gmlex.net; and to Genera PR LLC through: Jorge Fernandez-Reboredo, jfr@sbglaw.com, Alejandro López Rodríguez, alopez@sbglaw.com, legal@genera-pr.com, and regulatory@genera-pr.com.

² See LUMA's April 8, 2022 *Motion in Compliance with Resolution and Order of March 25, 2022, and Submitting Supporting Workpapers to LUMA's Annual Budgets and Request for Confidential Treatment*, at page 3. See also LUMA's June 5, 2023 *Memorandum of Law in Support of Request for Confidential Treatment of Supporting Workpapers to LUMA's Proposed Annual Transmission and Distribution Budgets for FY2024*.



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