

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

**NEPR**

**Received:**

**Sep 11, 2024**

**4:46 PM**

**IN RE:** REVIEW OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY  
INTEGRATED RESOURCE PLAN

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

**SUBJECT:** Motion Requesting Confidential  
Technical Conference

**MOTION REQUESTING CONFIDENTIAL TECHNICAL CONFERENCE**

**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:**

1. As operator of the transmission and distribution system, LUMA is responsible for developing an Integrated Resource Plan (IRP) that maps out the transformation of the island’s energy resources over the next two decades. LUMA is developing an IRP that best reflects our customers' energy needs and priorities, while reliably and responsibly progressing towards the clean energy goals that will best serve the interests of Puerto Rico for generations to come.

2. LUMA’s goal is to ensure that the IRP presents a diverse and analytically robust set of future scenarios and resource portfolios in order to map a sustainable and reliable energy future for Puerto Rico that is responsive to customer needs and Puerto Rico's public policy objectives.

3. The complexity and challenges of Puerto Rico’s electric system and regulatory requirements, coupled with the unforeseen delays in connection with the modeling software, render the November 29, 2024, filing deadline impossible to comply with.

4. LUMA is submitting this Motion to respectfully request the Puerto Rico Energy Bureau (“Energy Bureau”) to schedule an in-person Confidential Technical Conference in order to offer the Energy Bureau detailed insight into the status of the 2024 IRP and the complexities and challenges encountered.

## **II. Procedural Background**

5. On July 12, 2023, the Energy Bureau issued a Resolution and Order whereby it initiated the instant administrative proceeding for the review of the proposed Integrated Resource Plan (“2024 IRP”) to be filed by LUMA as the agent for the Puerto Rico Electric Power Authority (“PREPA”) (“July 12<sup>th</sup> Order”). In addition, the Energy Bureau granted LUMA’s previous request to schedule the initial Prefiling Technical Conference regarding the review of the 2024 IRP to no earlier than May 2023 to provide sufficient time for LUMA to be able to complete the IRP Technical Consultant contracting process before the technical conference. Accordingly, the Energy Bureau scheduled the 2024 IRP Prefiling Initial Technical Conference for August 8, 2023, pursuant to the *Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority*, Regulation No. 9021, dated April 20, 2018 (“Regulation 9021”).

6. On November 14, 2023, LUMA filed a *Request for Modification of Timeline for 2024 IRP Filing*. LUMA respectfully set forth that, per its discussion with the IRP Technical Consultant and based on the IRP Technical Consultant's vast experience, the normal scope of a regular IRP will typically require approximately nine (9) to twelve (12) months to complete. Also, LUMA explained that complexities in the planned scope of work for the 2024 IRP, which includes eight separate planning areas as opposed to the more common single planning area, integrated transmission modeling, and distributed energy resource modeling, as well as the

transmission and distribution areas and additional sensitivities that will be considered, required extra time to develop and file the 2024 IRP.

7. On December 20, 2023, the Energy Bureau issued a Resolution and Order approving LUMA's request for an extension to file the 2024 IRP to June 28, 2024. Further, the Energy Bureau scheduled a third technical conference for January 30, 2024, for LUMA to present information on certain parts of the transmission sections of Regulation 9021. On March 11, 2024, LUMA filed a *Motion Submitting Revised 2024 Integrated Resource Plan Scenarios and Characteristics*. Therein, LUMA submitted the six (6) scenarios ("Core Scenarios") that will form a key part of its 2024 IRP modeling analysis, which will be filed as part of LUMA's IRP submission on June 28, 2024. It also included four (4) scenarios ("Supplemental Scenarios") that would be filed in a Supplemental Filing after June 28, 2024. LUMA also explained that the exercise of revising the scenarios caused a temporary halt in the modeling of the base case scenario.

8. On March 13, 2024, the Energy Bureau entered a Resolution and Order confirming that LUMA can continue modeling the six (6) Core Scenarios for its proposed 2024 IRP filing scheduled for June 28, 2024, as requested in LUMA's *Motion Submitting Revised 2024 Integrated Resource Plan Scenarios and Characteristics* ("March 13<sup>th</sup> Order"). The Energy Bureau also ordered LUMA to submit the applicable evaluation and analysis concerning the four (4) Supplemental Scenarios included in said Motion on or before August 1, 2024.

9. On June 7, 2024, LUMA filed a *Motion Requesting the Continuance of the Deadline for the 2024 IRP Filing*, whereas it requested a continuance of the 2024 IRP filing date of June 28, 2024 ("June 7<sup>th</sup> Motion"). Thus, LUMA requested the Energy Bureau until June 28,

2024, to provide an updated schedule of the 2024 IRP Filing, provided the base case resource plan has been completed.

10. On June 18, 2024, the Energy Bureau granted LUMA’s request to suspend the filing date of June 28, 2024 (“June 18<sup>th</sup> Order”). It ordered LUMA to file by no later than June 28, 2024, and earlier, if possible, an expected date on which the 2024 IRP will be filed with all completed sections and work papers.

11. On June 28, 2024, LUMA filed a *Motion in Compliance with Resolution and Order of June 18, 2024, and Submitting Second Revised IRP Filing Schedule* (“June 28<sup>th</sup> Motion”). Therein, LUMA requested a modification for the 2024 IRP Filing to be extended to May 16, 2025. LUMA explained that after resolving the known modeling software issues encountered, it was able to provide an estimate of the time required to complete an IRP that meets applicable legal and regulatory requirements.

12. On August 20, 2024, the Energy Bureau entered a Resolution and Order denying LUMA’s request to file the Integrated Resource Plan (“2024 IRP”) on May 16, 2025. As such, the Energy Bureau declined to adopt LUMA’s proposed revised 2024 IRP schedule, which considered the necessary time to thoughtfully and accurately develop the IRP and complete the modeling and scheduled tasks in order to submit all scenarios together (“August 20<sup>th</sup> Order”). In the August 20<sup>th</sup> Order, the Energy Bureau instructed LUMA to file the Preferred Resource Plan and salient components of Regulation 9021 requirements by no later than Friday, November 29, 2024. Further, the Energy Bureau ordered LUMA to file certain transmission and distribution-related requirements of Regulation 9021 by no later than February 28, 2025.

### **III. Request for a Technical Conference**

13. The challenges outlined in the June 7<sup>th</sup> Motion and the June 28<sup>th</sup> Motion increased the number of simulations needed beyond the number of runs initially anticipated, and the number of runs typically required in developing an IRP. While LUMA and the IRP Technical Consultant have primarily worked through these issues, the impact on the schedule has been significant, and an extended modeling period has become necessary. The unavoidable delays resulting from the challenges associated with completing the Base Case Scenario have rendered the filing of the 2024 IRP by November 29, 2024, impossible to achieve.

14. LUMA and the IRP Technical Consultant need additional time beyond November 29, 2024, to carefully evaluate the results from the modeling software and address any illogical results impractical to Puerto Rico. This step and the time required to complete these reviews are necessary for LUMA to thoughtfully and accurately develop the IRP, complete the modeling and scheduled tasks, and conduct stakeholder engagement meetings.

15. As explained in the June 28<sup>th</sup> Motion, other jurisdictions with similar planning horizons spend between eighteen (18) to twenty-four (24) months developing. Currently, LUMA has spent eleven (11) months preparing the 2024 IRP, beginning with signing the contract with the IRP Technical Consultant in September 2023. Of these 11 months, six (6) months have been dedicated to resolving software programming issues that caused illogical results in the Base Case Scenario.

16. LUMA understands the urgency and importance of completing the 2024 IRP. It has taken and will continue to take all steps necessary to develop and submit a robust IRP analysis and report within the shortest possible timeframe while also ensuring that its outputs, recommendations, and results are reliable and provide the Energy Bureau, stakeholders, and the

customers with a clear understanding of the actions that must be taken to achieve the objectives of Puerto Rico’s energy public policy.

17. In light of this, LUMA respectfully requests the Energy Bureau to schedule an in-person Confidential Technical Conference to provide detailed insights into the status of the 2024 IRP and the complexities and challenges encountered during the modeling process.<sup>1</sup> The IRP Technical Consultant will be available to engage in an in-depth discussion and address any questions from the Commissioners or the Energy Bureau’s consultants regarding the IRP development. LUMA proposes scheduling this Confidential Technical Conference as soon as feasible, preferably during the week of September 17-20, 2024, given the impending deadlines set forth in the August 20<sup>th</sup> Order.

#### **IV. Request for Confidential Treatment**

18. Considering that the matters to be discussed at the requested Confidential Technical Conference related to the development of the 2024 IRP may be protected from disclosure as trade secrets, *see, e.g.*, Act 80-2011, P.R. Laws Ann. tit. 10, §§ 4131-4144 (2023), contain confidential information associated with Critical Energy Infrastructure Information (“CEII”) as defined in federal regulations, 18 C.F.R. §388.113; 6 U.S.C. §§ 671-674, and pursuant to the Energy Bureau’s Policy on Management of Confidential Information, LUMA hereby requests the Energy Bureau grants confidential treatment to the requested Confidential Technical Conference.

19. Section 6.15 of Act 57-2014, known as the “Puerto Rico Energy Transformation and Relief Act,” provides, in pertinent part, that: “[i]f any person who is required to submit

---

<sup>1</sup> LUMA reserves the right to separately request reconsideration of the August 20<sup>th</sup> Order or seek relief from it. At this time, LUMA believes that a confidential conference is the best way to balance the Energy Bureau’s interest in having the IRP filed as soon as reasonably possible with the challenges that make the deadlines in the August 20<sup>th</sup> Order unfeasible.

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).

20. Moreover, under the Industrial and Trade Secret Protection Act of Puerto Rico, Act 80-2011, P.R. Laws Ann. tit. 10, §§ 4131-4144 (2023), 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.<sup>2</sup> They 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; *see also* Puerto Rico Open Data Law, Act 122-2019, Article 4 (ix) (exempting from public disclosure trade secrets) and Article 4(x) (exempting from public disclosure commercial or financial information whose disclosure will cause competitive harm). The Puerto Rico Supreme Court has explained that the trade secrets privilege protects free enterprise and extends to

---

<sup>2</sup> 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, provided that these actions do not tend to conceal fraudulent actions or lead to an injustice. 32 P.R. Laws Ann. 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.*

commercial information that is confidential in nature. *Ponce Adv. Med. v. Santiago Gonzalez*, 197 DPR 891, 901-02 (2017) (citation omitted).

21. The Energy Bureau should protect the discussions in the requested Confidential Technical Conference as they pertain to processes and methods for developing the 2024 IRP that may prove advantageous or useful to LUMA's competitors in the energy business and utilities in Puerto Rico. LUMA takes reasonable security measures, such as this one, to maintain the confidentiality of its internal processes for developing the 2024 IRP. Thus, those discussions should be designated as commercially sensitive or trade secret information. This designation is a reasonable and necessary measure to protect the information and enable LUMA to compete fairly in the future.

22. Further, CEII or critical infrastructure information is 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.

23. 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.*

24. 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”).<sup>3</sup> 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).<sup>4</sup>

---

<sup>3</sup> 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.

<sup>4</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

25. Discussions in the requested Confidential Technical Conference could contain CEII that warrant 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. Given the importance of ensuring the safe and efficient operation of the generation assets and the Puerto Rico transmission and distribution system, LUMA respectfully submits that these discussions may constitute CEII that should be maintained confidentially to safeguard their integrity and protect them from external threats.

**WHEREFORE**, LUMA respectfully requests the Energy Bureau to **take notice** of the foregoing; and **schedule** a confidential Technical Conference for September 17-20, 2024.

**RESPECTFULLY SUBMITTED.**

**WE HEREBY CERTIFY** that this Motion was filed using the electronic filing system of this Energy Bureau and that electronic copies of this Motion will be notified to the Puerto Rico Electric Power Authority: [lionel.santa@prepa.pr.gov](mailto:lionel.santa@prepa.pr.gov) and through its attorneys of record González & Martínez, Mirelis Valle-Cancel, [mvalle@gmlex.net](mailto:mvalle@gmlex.net); and Alexis G. Rivera Medina, [arivera@gmlex.net](mailto:arivera@gmlex.net); and Genera PR, LLC: [brannen@genera-services.com](mailto:brannen@genera-services.com); [kbolanos@genera-pr.com](mailto:kbolanos@genera-pr.com); [regulatory@genera-pr.com](mailto:regulatory@genera-pr.com).

In San Juan, Puerto Rico, on September 11, 2024.

---

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.



**DLA Piper (Puerto Rico) LLC**  
Calle de la Tanca #500, Suite 401  
San Juan, PR 00901-1969  
Tel. 787.945.9122  
Fax 939.697.6147

*/s/ Margarita Mercado Echegaray*  
Margarita Mercado Echegaray  
PR Bar No. 16,266  
[margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com)

*/s/ Yahaira De la Rosa Algarín*  
Yahaira De la Rosa Algarín  
PR Bar No. 18,061  
[yahaira.delarosa@us.dlapiper.com](mailto:yahaira.delarosa@us.dlapiper.com)