

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

NEPR
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IN RE:

IN RE: REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY'S 10-
YEAR INFRASTRUCTURE PLAN-
DECEMBER 2020

CASE NO. NEPR-MI-2021-0002

**SUBJECT: Submission of List of Potential
Transmission and Distribution Asset Sites for
Battery Energy Storage Systems in Compliance
with Resolution and Order Issued on September 4,
2024, and Request for Confidentiality and
Supporting Memorandum of Law**

**MOTION SUBMITTING LIST OF POTENTIAL TRANSMISSION AND
DISTRIBUTION ASSET SITES FOR BATTERY ENERGY STORAGE SYSTEMS IN
COMPLIANCE WITH ORDER ISSUED ON SEPTEMBER 4, 2024, AND REQUEST
FOR CONFIDENTIALITY AND SUPPORTING MEMORANDUM OF LAW**

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC (“ManagementCo”), and **LUMA Energy ServCo, LLC** (“ServCo”), (jointly referred to as “LUMA”), and respectfully state the following:

I. Compliance with Order of September 4, 2024

1. On March 26, 2021, this Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order (“March 26th Order”) requiring the Puerto Rico Electric Power Authority (“PREPA”) to submit each specific capital investment project proposed by PREPA be funded with Federal Emergency Management Agency (“FEMA”) funds or any other federal funds for approval of the Energy Bureau at least thirty (30) days before their submittal to the Puerto Rico Central Office for Recovery, Reconstruction and Resiliency (“COR3”), FEMA or any other federal agency. *See* March 26th Order on pages 18-19.

2. On October 27, 2023, Genera PR, LLC (“Genera”) filed an *Amended Motion for Leave to Submit Amendment to Project and 406 BESSs Initial Scope of Work* (“Genera October 27th Motion”) in which Genera presented to the Energy Bureau a proposal to “use existing points of interconnection (“POI”) in PREPA’s legacy generation facilities to install utility-scale

batteries”, an approach which Genera indicated would “provide flexibility and resiliency to the operation of the generation fleet” (as described in the Genera October 27th Motion, the “Genera BESS Projects”). *See* Genera October 27th Motion on pages 5-6. Genera also requested the Energy Bureau leave to present to the COR3 and FEMA a Project Amendment and a Section 406 Initial scope of work (“SOW”) for the Genera BESS Project and “to continue with all activities required to complete the essential documentation and analysis to complete the [Genera BESS Project]”. *See id.* at pages 8-9.

3. On November 8, 2023, the Energy Bureau issued a Resolution and Order (“November 8th Order”) conditionally approving the Genera BESS Project, subject to the submittal by Genera of detailed SOWs for each project and compliance with subsequent steps of providing the Energy with copy of COR3 and/or FEMA approvals and information on obligated costs, contracted costs and project completion. *See* November 8th Order on pages 2-3. The Energy Bureau also recognized that “the [BESS] can be used as an asset for power generation, for power transmission and distribution, or both” and that their resolution was “not limiting its use neither making a determination on any party operation or maintenance responsibility”, which would “be addressed by the Energy Bureau on a separate Resolution”. *See id.*

4. On November 21, 2023, Genera filed a *Motion Submitting Response in Compliance with Resolution and Order Dated November 8, 2023, and Request a Time Extension to Provide the Detailed Scope of Work per Site* where it submitted a detailed explanation of the steps needed to complete the SOWs per site and proposed to submit a monthly progress report on the interconnection studies to be conducted by LUMA, the development status of the SOWs, and other processes described in their motion.

5. On November 30, 2023, the Energy Bureau issued a Resolution and Order (“November 30th Order”) in which, among others, it ordered LUMA to submit “a status of LUMA’s due diligence to allow the [Genera BESS Project] to interconnect at the various sites”.

6. On December 7, 2023, LUMA filed *LUMA 's Motion to Submit Information on Status of Due Diligence to allow Genera BESS Projects to Interconnect, in Compliance with the Resolution and Order of November 30, 2023*, submitting its response to the status requested of LUMA’s due diligence to allow the Genera BESS Project to interconnect.

7. On September 4, 2024, the Energy Bureau issued a Resolution and Order (“September 4th Order”) in which it took notice of the monthly progress reports for the Genera BESS Project filed by Genera for the months of March to July 2024 and determined that “the BESS Project can provide grid support services to manage expected large influx and can best serve areas most susceptible to power loses and provide support for Generation assets” and that, consequently, “it is in the best interest [of] the electric system consumers to further accelerate the implementation of the Genera BESS Project”. *See* September 4th Order on page 3. The Energy Bureau then ordered LUMA to present, within twenty (20) days of the notification of the September 4th Order, “a list of the alternate [transmission and distribution (“T&D”)] assets sites and/or generation sites where BESS units contemplated in Genera BESS Project can be installed **without requiring demolition and/or cleanup work or interconnection costs**, for the Energy Bureau’s review and approval”. *See id.*

8. On September 10, 2024, the Energy Bureau issued a bench order (“September 10th Bench Order”), during a Virtual Technical Workshop in Case No. NEPR-MI-2024-0002¹, requesting LUMA to take into account in the preparation of the list of sites required by the

¹ *In Re: Priority Plan for the Stabilization of the Electric Grid.*

September 4th Order, whether the proposed site has the necessary communication and control capabilities.

9. On September 18, 2024, LUMA informed the Energy Bureau that it had, through diligent efforts, compiled a preliminary list of potentially suitable T&D asset sites for the potential deployment of Genera BESS units and anticipated it would need additional time to complete a reasonably vetted list of these sites with the most current and accurate information. *See Request for Extension of Time to Comply with Resolution and Order Issued on September 4, 2024* (“September 18th Motion”). Therefore, LUMA requested ten (10) additional business days to submit the list, to ensure it was better aligned with the Energy Bureau’s objectives and LUMA’s commitment to provide accurate and up-to-date information that would allow for a meaningful engagement on the subject.

10. In compliance with the September 4th Order, as clarified by the September 10th Bench Order, and as per LUMA’s September 18th Motion, LUMA herein submits the list of potentially suitable T&D asset sites for the potential deployment of Genera BESS units as contemplated for the Genera BESS Project, that more closely meet the requirements set forth in the September 4th Order². *See Exhibit 1. Exhibit 1* contains information for each of the identified sites on up-to-date hosting capacity information, and the communications capability to inject power from the new BESS units into the electric grid, among others.

11. LUMA hereby requests that *Exhibit 1* be maintained confidential and submits a redacted version for public disclosure and an unredacted non-public version under seal of confidentiality. LUMA submits its Memorandum of Law below stating the legal basis for which

² All identified sites require some work in order to accommodate the Point of Interconnection, but the scope of work required for the identified sites is relatively minimal compared to the work typically required for these types of systems. In addition, interconnection in all identified sites entails some interconnection costs; therefore, Exhibit 1 identifies the level of these costs which range from low to high.

the unredacted version of Exhibit 1 should be filed under seal of confidentiality. As will be explained below, portions of Exhibit 1 should be protected from public disclosure as these documents 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 per the Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, as amended by the Resolution dated September 20, 2016 (“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

12. 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).

13. 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).

14. 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 in accordance with the Rules of Evidence of Puerto Rico.

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

16. The Energy Bureau’s Policy on Management of Confidential Information states the following with regard to access to validated Trade Secret Information and CEII:

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 [Energy Bureau], unless otherwise set forth by the [Energy 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. at § D (on Access to Validated Confidential Information).

17. 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. Discussion in Support of Request for Confidential Treatment

18. 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.

19. 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, 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.

20. 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.*

21. 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”).³

³ 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;

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).⁴

22. The list of T&D asset sites in *Exhibit 1* qualifies as CEII because it contains the express coordinates to potential sites for power transmission and distribution facilities (18 C.F.R. § 388.113(iv)), and these specific coordinates could potentially be helpful to a person planning an attack on energy facilities. The information identified as confidential in this paragraph is not common knowledge and is not made publicly available. Therefore, it is respectfully submitted that,

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- (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.

⁴ 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.

on balance, the public interest in protecting CEII weighs in favor of protecting the relevant portions of the *Exhibit 1* from disclosure.

23. Based on the above, LUMA respectfully submits that *Exhibit 1* should be designated as CEII. This designation is a reasonable and necessary measure to protect the specific location of potential sites for energy facilities listed or discussed in *Exhibit 1*. Given the importance of ensuring the safe and efficient operation of the generation assets and the T&D System, LUMA respectfully submits that these materials constitute CEII that should be maintained confidentially to safeguard their integrity and protect them from external threats.

C. Identification of Confidential Information

24. 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	Name	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
Exhibit 1	List of Possible Sites for BESS Project	First and only tab: column D in all rows	Critical Energy Infrastructure Information, 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674	October 8, 2024

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned, **accept** *Exhibit 1* herein in compliance with the September 4th Order, as clarified by the September 10th Bench Order, and **deem** LUMA in compliance with such orders; and **grant** the request for confidential treatment of the confidential *Exhibit 1*.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 8th day of October 2024.

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



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Exhibit 1

List of T&D Asset Sites for Potential BESS Project

[Redacted Version; Unredacted/Public Version Submitted under Seal of Confidentiality; Both in Excel Versions Submitted via Email]