

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

NEPR

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IN RE: PUERTO RICO ELECTRIC
POWER AUTHORITY RATE REVIEW

CASE NO.: NEPR-AP-2023-0003

SUBJECT: Memorandum of Law in
Support of Confidential Treatment of
LUMA's Witnesses' Email Addresses
Submitted in Compliance with July 7th and
10th Orders

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
LUMA'S WITNESSES' EMAIL ADDRESSES SUBMITTED IN COMPLIANCE WITH
JULY 7TH AND 10TH ORDERS**

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 and Procedural Background

On July 3, 2025, LUMA filed its *Motion Submitting Rate Review Petition* ("Rate Review Petition") with this Honorable Puerto Rico Energy Bureau ("Energy Bureau"). Therein, it included LUMA's, Genera PR, LLC's ("Genera") and the Puerto Rico Electric Power Authority's ("PREPA") witnesses' pre-filed testimonies, together with supporting documents, workpapers and schedules. On that same day, the discovery phase of the captioned proceeding commenced, pursuant to the procedural schedule attached to the *Hearing Examiner's Order on Procedure and Rate Design Conference*, issued on May 2, 2025.

On July 7, 2025, the Hearing Examiner, Scott Hempling, issued an Order¹ (July 7th Order), authorizing the Energy Bureau’s consultants, including the Hearing Examiner, to directly email witnesses for the purpose of clarifying discovery requests. The Hearing Examiner posited that this approach was aimed at expediting matters by allowing quick clarifications, such as locating specific calculations or resolving discrepancies in the documents accompanying the Rate Review Petition. Consequently, the Hearing Examiner requested that the parties provide the email addresses for each of their witnesses. *See* July 7th Order, at p. 6.

On July 9, 2025, LUMA filed an *Urgent Request for Partial Reconsideration of July 7th Order, Request for Continuance of Virtual Conference, and Response to Order on Informal Communications* (July 9th Request). In its July 9th Request, and in what is pertinent to this memorandum, LUMA submitted that the Energy Bureau’s consultants’ requests for clarification were more appropriately channeled through counsel for LUMA, which would promptly relay the request(s) to the witness(es) and facilitate a timely response.

On July 10, 2025, the Hearing Examiner issued a new *Order on LUMA’s Request for Partial Reconsideration* (July 10th Order), whereby it denied LUMA’s request to channel the Energy Bureau’s consultants’ requests for clarification through counsel. Accordingly, the July 10th Order required that all counsel for LUMA, PREPA, and Genera provide – by July 11, 2025 – the Hearing Examiner, the Energy Bureau’s consultants, and all participants with the email addresses of their witnesses, as well as the email addresses of any counsel who wished to be copied on these requests. The July 10th Order emphasized that these communications were to be limited to clarifying where material exists and how it is organized. *See* July 10th Order, at p. 2.

¹ *See* “Hearing Examiner’s Order Setting Deadlines Relating to Provisional Rates; Granting Requests to Intervene of SESA and Walmart; Clarifying Provisional-Rate Terminology; Providing for Limited Informal Communications; and Correcting Testimonial Error.” Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2025/07/20250707-AP20230003-Hearing-Examiner-Order.pdf>.

In compliance with the Hearing Examiner's July 7th and 10th Orders, on July 11, 2025, the undersigned counsel submitted via email to the Hearing Examiner, the Energy Bureau's consultants, and all participants,² a list containing the email addresses of all of LUMA's witnesses. LUMA requested that the list of LUMA's witnesses' emails be treated as confidential information to be used exclusively by the Energy Bureau, its consultants and the parties of record. In furtherance thereof, LUMA 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 ("Policy on Confidential Information"), under separate cover and expediently, it would submit a memorandum of law in support of its request to file and maintain certain documents under seal of confidentiality.

In compliance with the Energy Bureau's Policy on Confidential Information, LUMA hereby submits this memorandum of law that identifies and explains the legal basis for confidential treatment of the list of LUMA's witnesses' emails that was submitted on July 11, 2025.

II. Request for Confidentiality and Supporting Arguments

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" PR Laws Ann. Tit. 22 § 1054n (2025), 22 LPRA § 1054n (2025). 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

² The July 10th Order provided that the witness email list could be provided via email. *See* July 10th Order, at p. 2 ("You can put the information in the email message. No attached document is necessary").

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, Section 1.10(i) of Act 17-2019³ further provides that electric power service companies shall submit information requested by customers, except for: (i) confidential information in accordance with the Rules of Evidence of Puerto Rico; [...] or (ix) matters of public security involving threats against PREPA, its property or employees. PR Laws Ann. Tit. 22 § 1141i (2025), 22 LPRA § 1141i (2025).

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, PR Laws Ann. Tit. 22 § 1054n (2025), 22 LPRA § 1054n (2025). 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).

Moreover, 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, “no later than ten (10) days after filing of the Confidential Information,” explaining the legal basis and support for a request to file information confidentially. *See* Policy on Confidential Information,

³ Known as the “Puerto Rico Energy Public Policy Act” (hereinafter, “Act 17-2019”).

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.

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 according to . . . Article 6.15 of Act No. 57-2014, as amended.”

LUMA respectfully posits that protecting LUMA’s witnesses’ emails, as submitted on July 11, 2025, 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, which protect the right to control personal information and distinctive traits, and 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, Articles 4(vi) and (xi), 3 LPRA § 9894

(providing that information the disclosure of which could invade the privacy of third parties or affect their fundamental rights – such as emergency contact information – is excepted from public disclosure).

It is respectfully submitted that the public interest in protecting privacy weighs in favor of affording confidential treatment to LUMA’s witnesses’ email addresses. The email addresses are available to the Energy Bureau and the parties, as required by the Hearing Examiner. Since the email addresses are not required for the Energy Bureau to issue substantive rulings pertaining to the Rate Review Petition, this request to maintain the email addresses under seal, does not affect the public’s or the Energy Bureau’s review of LUMA’s Rate Review Petition nor interfere with subsequent processes before this Energy Bureau.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned; and **grant** LUMA’s request to keep LUMA’s witnesses’ emails, as submitted to the Hearing Examiner on July 11, 2025, under seal of confidentiality.⁴

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 21st day of July, 2025.

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 Hearing Examiner, Scott Hempling, shempling@scotthemplinglaw.com; and to the attorneys of the parties of record. To wit, to the **Puerto Rico Electric Power Authority**, through: Mirelis Valle-Cancel, mvalle@gmlex.net; Juan González, jgonzalez@gmlex.net; Alexis G. Rivera Medina, arivera@gmlex.net; and Juan Martínez, jmartinez@gmlex.net; and to **Genera PR, LLC**, through: Jorge Fernández-Reboredo, jfr@sbgbllaw.com; Gabriela Castrodad, gcastrodad@sbgbllaw.com; Jennise Alvarez, jennalvarez@sbgbllaw.com; regulatory@genera-pr.com; José J. Díaz Alonso, jdiaz@sbgbllaw.com; and legal@genera-pr.com; **Co-**

⁴ On May 9, 2025, this Energy Bureau issued a Resolution and Order, which established a requirement that all substantive English-language filings be accompanied by concise Spanish summaries to enhance public accessibility and participation (“March 9th Order”). On reconsideration, said directive was modified by way another Resolution and Order issued on June 4, 2025 Order, which clarified that full translations are optional but summaries are mandatory and must be filed concurrently with the original English documents. (“June 4th Order”). In compliance with the Energy Bureau’s standing directives regarding accessibility and ensuring citizen participation, LUMA hereby submits a Spanish-language summary of the present Memorandum. *See Exhibit 1.*

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Exhibit 1

Memorando de Derecho en Apoyo a Solicitud de Tratamiento Confidencial de las direcciones de correo electrónico de los testigos de LUMA, presentadas en cumplimiento de las órdenes del 7 y 10 de julio
presentada por LUMA Energy, LLC y LUMA Energy ServCo, LLC

En el *Memorando de Derecho en Apoyo a Solicitud de Tratamiento Confidencial de las direcciones de correo electrónico de los testigos de LUMA, presentadas en cumplimiento de las órdenes del 7 y 10 de julio*, presentado por LUMA Energy, LLC y LUMA Energy ServCo, LLC ante el Negociado de Energía de Puerto Rico (“Memorando de Confidencialidad”), se esbozan los fundamentos en derecho que justifican el trato confidencial de las direcciones de correo electrónico de los testigos de LUMA, las cuales LUMA presentó en cumplimiento con las órdenes emitidas el 7 y 10 de julio de 2025, por el Oficial Examinador del Negociado de Energía de Puerto Rico. LUMA argumenta que la información que se busca proteger constituye información personal, cuya divulgación pública puede invadir la intimidad o afectar derechos fundamentales. El Memorando de Confidencialidad detalla el marco legal aplicable, citando leyes y casuística local, como la Ley Núm. 57-2014 (*Ley de Transformación y ALIVIO Energético*), la Ley Núm. 17-2019 (*Ley de Política Pública Energética de Puerto Rico*), la Ley Núm. 122-2019 (*Ley de Datos Abiertos del Gobierno de Puerto Rico*) y la Constitución de Puerto Rico, y enfatiza que la protección de esta información es acorde con el interés público y está alineada con el marco legal de Puerto Rico sobre privacidad, que protege de la divulgación de información personal. Véase, por ejemplo, la Constitución ELA, art. II, secciones 8 y 10, que protegen el derecho a proteger la información personal y los rasgos distintivos, cuyas protecciones aplican *ex proprio vigore*.