

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

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IN RE:
LUMA’S ACCELERATED STORAGE
ADDITION PROGRAM

CASE NO. NEPR-MI-2024-0002

SUBJECT: Draft Standard Offer Phase 1
Agreement with Sixth Participant

REQUEST FOR APPROVAL OF STANDARD OFFER PHASE 1
AGREEMENT WITH SIXTH PARTICIPANT

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC (“ManagementCo”), and LUMA Energy Servco, LLC (“ServCo”) (jointly referred to as “LUMA”), through the undersigned counsel, and respectfully states and requests the following:

I. INTRODUCTION

LUMA respectfully submits this motion to present for the Puerto Rico Energy Bureau’s (“Energy Bureau”) review and approval an additional draft Standard Offer Phase 1 (“SO1”) Agreement developed under the Accelerated Storage Addition Program (“ASAP”). This draft agreement, negotiated with one of the Independent Power Producers (“IPPs”) participating in the program, referred to herein as the Sixth Participant, reflects the continued implementation of the ASAP framework approved by this Honorable Energy Bureau and incorporates refinements based on lessons learned through assessments.

The submission of this draft SO1 Agreement represents a critical step in expanding the deployment of battery energy storage systems (“BESS”) across Puerto Rico’s electric grid. The agreement is consistent with the structure previously approved by the Energy Bureau and

maintains alignment with the operative Integrated Resource Plan (“IRP”) and Puerto Rico’s energy public policy.

In support of this request, LUMA is submitting clean and redline versions of the draft SO1 agreement. Given the commercially sensitive and infrastructure-critical nature of the information contained in these exhibits, LUMA respectfully requests that the Energy Bureau designate it as confidential and maintain it under seal.

II. RELEVANT PROCEDURAL HISTORY

1. On April 19, 2024, the Energy Bureau issued a Resolution and Order opening the instant docket for the evaluation of the ASAP and related submission processes to follow.

2. On April 26, 2024, LUMA submitted to the Energy Bureau the ASAP concept for the Energy Bureau’s review.¹

3. On May 8, 2024, the Energy Bureau issued a Resolution and Order determining that the ASAP concept is aligned with Puerto Rico’s energy public policy and is consistent with the IRP², approving the ASAP concept, and authorizing LUMA and the IPPs to proceed with the development of the Standard Offer (“SO”)Agreements.³

4. On October 18, 2024, LUMA submitted to the Energy Bureau a final draft of the SO Agreement for Phase 1 of ASAP (“SO1 Agreement”), in the form of four (4) SO1 Agreements prepared with respect to four interested IPPs.⁴

¹ See *Motion to Submit ASAP Structure and Concept in Compliance with Resolution and Order issued on April 19, 2024, and Request for Determination of Consistency with Energy Public Policy and IRP*, Exhibit 1.

² The IRP was approved in part and rejected in part by the Energy Bureau in their Final Resolution and Order dated August 24, 2020 in Case CEPR-AP-2018-0001, in which the Energy Bureau also ordered the adoption and implementation of a Modified Action Plan.

³ See order p. 4.

⁴ See *Motion in Compliance with Resolution and Order of October 11, 2024, and Request for Confidential Treatment* (“October 18th Motion”), p. 13 and Exhibits 1 and 2.

5. On November 1, 2024, the Energy Bureau issued a Resolution and Order approving the four (4) draft SO1 Agreements submitted with the October 18th Motion and issued directives for its finalization and approval by PREPA's Board of Directors, among others.⁵

6. On November 12, 2024, LUMA informed the Energy Bureau that it had finalized three of the four SO Phase 1 Agreements and submitted these to PREPA's Board of Directors.⁶

7. On December 23, 2024, LUMA submitted to the Energy Bureau the fourth finalized version of the SO1 Agreement for the Energy Bureau's approval.⁷

8. On January 14, 2025, the Energy Bureau issued a Resolution and Order in which it approved the finalized version of the fourth SO1 Agreement and issued directives for its approval by PREPA's Board of Directors, among others.

9. On August 5, 2025, LUMA submitted to the Energy Bureau for its approval a draft SO1 Agreement with a fifth participant ("Fifth Participant").⁸

10. On August 8, 2025, the Energy Bureau issued a Resolution and Order in which it approved the Fifth Participant's draft SO1 Agreement and issued directives for its finalization and approval by PREPA's Board of Directors.

III. DRAFT SO1 WITH SIXTH ASAP PARTICIPANT

11. As part of the ongoing implementation of the ASAP program, LUMA has finalized the draft SO1 Agreement with a sixth IPP participant ("Sixth Participant"). LUMA is submitting as Exhibit 1 to this motion two documents: a clean version of the draft SO1 Agreement (Exhibit

⁵ See order, pp. 1-2.

⁶ See *Motion to Submit Information on Three Finalized Standard Offer Agreements in Compliance with Resolution and Order of November 1, 2024, and Request for Extension to Submit Finalized Fourth Agreement, Clarification on Next Steps, and Confidential Treatment*, pp. 3, 7-8.

⁷ See *Motion to Submit Proposed Final SO1 Agreement with Fourth Participant in Compliance with Resolution and Order of December 4, 2024, and Request for Confidentiality*.

⁸ See *Request for Approval of Standard Offer Phase 1 Agreement with Fifth Participant*.

1-A) and a redline version showing changes against the approved standard agreement (Exhibit 1-B).

IV. REQUEST FOR CONFIDENTIAL TREATMENT

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

i. General Framework

12. Section 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*, Act No. 57-2014, as amended (“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).

13. In connection with the duties of electric power service companies, Section 1.10 (i) of *Puerto Rico Energy Public Policy Act*, Act No. 17-2019, as amended (“Act 17-2019”) provides 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.

14. 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.” *Id.* Section 6.15(b), 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 need 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).

15. 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 Policy on Confidential Information requires the identification of confidential information and the filing of a memorandum of law explaining the legal basis and supporting evidence 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 a “redacted” or “public version” and an “unredacted” or “confidential” version of the document that contains confidential information. *Id.* paragraph 6.

16. The Energy Bureau’s Policy on Management of Confidential Information states the following regarding 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. Relatedly, Regulation 8543 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. 57-2014, as amended.

1. Critical Energy Infrastructure

18. Generally, 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.

Id.

19. 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.*

20. 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”).⁹

⁹ Regarding protection of voluntary disclosures of critical infrastructure information, 6 U.S.C. § 673, provides in pertinent part, that CII:

1. shall be exempt from disclosure under the Freedom of Information Act;
2. shall not be subject to any agency rules or judicial doctrine regarding *ex parte* communications with a decision-making official;
3. 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;
4. 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
5. 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).¹⁰

2. Commercially Sensitive Confidential Information

21. The Puerto Rico legal system recognizes and protects the confidentiality of certain information considered to be privileged. In part, privileged materials are exclusively referred to as the privileges codified in the Rules of Evidence. *E.L.A v. Casta*, 162 DPR 1, 10 (2004). One of these recognized privileges is the company’s Trade Secrets:

The owner of a trade secret has a privilege, which may be claimed by such person or by his or her agent or employee, to refuse to disclose and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the owner of a trade secret and of the parties and the interests of justice require.

See R. Evid. 513, 32 LPRA Ap. IV, R. 513 (2024).

22. In essence, this privilege “protects confidential commercial information” and is “based on public policy considerations aimed at promoting innovation, commercial production and business operation improvement, which in turn contributes to economic and technological development”. *Colón Rivera v. Triple-S Salud, Inc.*, 2020 WL 8458051, p. 7 (Puerto Rico Court of Appeals, December 22, 2020) (translation provided).

¹⁰ 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.

23. The Puerto Rico Trade and Industrial Secrets Protection Act - Act. No. 80 of June 3, 2011, as amended, 10 LPRA § 4131 (2024) (“Act 80-2011”) considers a trade secret any information that:

- (a) From which an independent economic value, whether current value or potential value, or a commercial advantage is derived because such information is not commonly known or accessible by appropriate means to those persons who may derive pecuniary benefit from the use or disclosure of such information, and
- (b) which has been subject to reasonable security measures, under the circumstances, to maintain its confidentiality.

10 PRA § 4132 (translation provided).

24. Act 80-2011 considers reasonable security measures such as those taken by the owner to limit access to information under particular circumstances. 10 LPRA§ 4133. The following are considered reasonable measures, among others:

- (a) Not disclose the information to individuals or entities not authorized to have access to it;
- (b) limit the number of people authorized to access the information;
- (c) require employees of the company authorized to access the information to sign confidentiality agreements;
- (d) store the information in a separate place from any other information;
- (e) label the information as confidential;
- (f) take measures to prevent indiscriminate reproduction of the information;
- (g) establish control measures for the use or access of the information by employees, or
- (h) implement available technological measures when publishing or transmitting information through the Internet, including the use of email, webpages, discussion forums and any other equivalent means.

Id. (translation provided).

25. Article 11(c) of Act 80-2011 establishes that, before ordering any production of a commercial trade secret, it should be determined whether there is a substantial need for the information. (Our translation). 10 LPRA § 4139(c). Puerto Rico Courts in adversarial cases have interpreted a “substantial need” when the following four (4) conditions are present:

- (1) The allegations raised for the purpose of establishing the existence or absence of liability have been specifically raised;
- (2) the information sought to be discovered is directly relevant to the allegations specifically raised;
- (3) the information sought to be discovered is such that the party seeking discovery would be substantially prejudiced if not permitted access to it; and
- (4) there is a good faith belief that testimony or evidence derived from the information that is part of the trade secret will be admissible at trial.

Ponce Adv. Med. v. Santiago González, 197 DPR 891, 905 (2017) (translation provided).

b. Request for Confidential Designation

i. Critical Energy Infrastructure Information

26. Exhibit 1 contains detailed technical and operational information about energy infrastructure that, if disclosed, could compromise the security and reliability of Puerto Rico's electric system. The document includes specific engineering data, such as single-line diagrams and dispatch strategies for BESS. These details go beyond general descriptions and reveal the physical and operational characteristics of critical infrastructure assets.

27. The information is not publicly available and is of a nature that could be exploited by malicious actors to identify vulnerabilities in the energy system. Public disclosure would increase the risk of targeted disruptions, particularly in a jurisdiction like Puerto Rico where grid resilience is a matter of national concern. The document also includes planning assumptions and infrastructure configurations that are essential to the safe and secure operation of the bulk-power system.

28. Protecting this information from public disclosure is consistent with the broader public interest in safeguarding critical infrastructure. It ensures that sensitive design and operational data are not exposed in a manner that could endanger public safety, economic stability, or energy reliability. The confidentiality designation is narrowly tailored to protect only those

portions of the record that implicate infrastructure security, without impeding the Energy Bureau's ability to conduct its regulatory oversight.

ii. Commercially Sensitive Confidential Information

29. Exhibit 1 also contains proprietary commercial information that reflects LUMA's internal strategies, financial planning, and negotiated terms with a private developer under the ASAP program which *are preliminary and not yet finalized*. These elements are the result of internal analysis and negotiation, and they are not publicly disclosed or accessible to competitors or other market participants at this time.

30. The exhibit also outlines specific commercial terms that are unique to the Sixth Participant, including provisions related to capacity, transformer utilization, and dispatch flexibility. These terms were developed through extensive engagement with the developer and reflect LUMA's strategic approach to accelerating capacity deployment while managing system constraints. Public disclosure of these terms would reveal LUMA's negotiation posture, potentially undermining its position in future agreements with other developers.

31. LUMA has taken deliberate steps to protect the confidentiality of this information, including limiting access to authorized personnel, labeling the document as confidential, and restricting its distribution. The information derives independent economic value from its secrecy, as it provides LUMA with a commercial advantage in structuring and negotiating future agreements under the ASAP framework and future projects.

32. Disclosure of this information would not only compromise LUMA's competitive position but could also disrupt ongoing commercial negotiations. The confidentiality designation

is therefore necessary to protect the integrity of LUMA's business operations and to preserve the economic value of its proprietary strategies.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **approve** the Draft SO1 Agreement with the Sixth Participant; **find** that Exhibits 1-A and 1-B constitute Validated Confidential Information; and **order** the Clerk of the Energy Bureau to maintain Exhibits 1-A and 1-B under seal of confidentiality.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on the 10th day of September 2025.

We hereby certify that this motion was filed using the electronic filing system of this Energy Bureau and we will send a courtesy copy of this motion to hriviera@jrspr.gov, oramos@pmalaw.com, and agraitfe@agraitlawpr.com.



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Exhibit 1-A

[Submitted under Seal of Confidentiality]

Exhibit 1-B

[Submitted under Seal of Confidentiality]