

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

NEPR

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**IN RE:
LUMA'S ACCELERATED STORAGE
ADDITION PROGRAM**

CASE NO. NEPR-MI-2024-0002

SUBJECT: Evidence of Submittal of Finalized Draft of Standard Offer Phase 1 Agreement with Sixth Participant to PREPA Governing Board, in Compliance with Resolution and Order of September 17, 2025

**MOTION SUBMITTING EVIDENCE OF SUBMITTAL OF FINALIZED DRAFT OF
PHASE 1 AGREEMENT WITH SIXTH PARTICIPANT TO PREPA BOARD OF
DIRECTORS, IN COMPLIANCE WITH RESOLUTION AND ORDER OF
SEPTEMBER 17, 2025**

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

In compliance with the Resolution and Order issued by the Energy Bureau of the Puerto Rico Service Regulatory Board (“Energy Bureau”) on September 17, 2025, LUMA is pleased to submit with this Motion evidence of submittal to the Puerto Rico Electric Power Authority’s (“PREPA”) Board of Directors of the finalized version of the Standard Offer Phase 1 (“SO1”) Agreement developed under the Accelerated Storage Addition Program (“ASAP”) negotiated with one of the Independent Power Producers (“IPPs”) participating in the program, referred to herein as the sixth participant. This step reflects the continued implementation of the ASAP framework approved by this Honorable Energy Bureau.

Given the commercially sensitive nature of the information contained in the documents submitted herein, LUMA respectfully requests that the Energy Bureau designate these documents as confidential and maintain them 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 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 IRP¹, approving the ASAP concept, and authorizing LUMA and the IPPs to proceed with the development of the Standard Offer ("SO") Agreements.²

3. 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.³

4. 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 issuing directives on next steps for its finalization and approval. *See order*, pp. 1-2.

5. On December 23, 2024, LUMA submitted to the Energy Bureau a revised finalized version of the SO1 Agreement with one of the four original participants for the Energy Bureau's approval.⁴

¹ 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.

² *See order*, p. 4.

³ *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.

⁴ *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*.

6. On January 14, 2025, the Energy Bureau issued a Resolution and Order approving the finalized version of the fourth SO1 Agreement and issuing directives on next steps for its finalization and approval.

7. On August 5, 2025, LUMA submitted to the Energy Bureau for its approval a draft SO1 Agreement with a fifth SO1 participant.⁵

8. On August 8, 2025, the Energy Bureau issued a Resolution and Order approving the finalized version of the SO1 Agreement with the fifth SO1 participant and issuing directives on next steps for its finalization and approval.

9. On September 10, 2025, LUMA submitted to the Energy Bureau for its approval a draft SO1 Agreement with a sixth SO1 participant (“Sixth SO1 Agreement”).⁶

10. On September 17, 2025, the Energy Bureau issued a Resolution and Order in which it approved the Sixth SO1 Agreement and ordered LUMA to “within the next five (5) business days from the notification of [the September 17th Order], (i) finalize [the SO1 Agreement]; (ii) submit the final version of the [SO1 Agreement] before the [PREPA] Board of Directors for its approval; and (iii) submit to the Energy Bureau evidence of the foregoing submittal (including copy of the contract).” (Emphasis and footnote omitted). The Energy Bureau directed that the draft agreement be submitted in a clean version and a redline version reflecting any minor modifications, if any, to the approved draft.

III. EVIDENCE OF SUBMITTAL OF THE SIXTH PARTICIPANT’S SO1 AGREEMENT TO PREPA’S BOARD OF DIRECTORS

11. In accordance with the September 17th Order, LUMA herein informs that on September 18, 2025, it submitted the finalized Sixth SO1 Agreement to PREPA’s Executive

⁵ See *Request for Approval of Standard Offer Phase 1 Agreement with Fifth Participant*.

⁶ See *Request for Approval of Standard Offer Phase 1 Agreement with Sixth Participant*.

Director for submittal and approval by PREPA's Board of Directors. LUMA is submitting herein, as *Exhibit 1*, evidence of this submittal, which includes copy of the SO1 Agreement as submitted to PREPA. This version of the SO1 Agreement is identical to the clean version submitted to the Energy Bureau on September 10, 2025 and approved by the Energy Bureau in the September 17th Order; therefore, there were no changes made to the approved SO1 Agreement and the submittal of a redline is inapplicable in this case.

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”).⁷

⁷ 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;

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).⁸

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).

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- (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.

⁸ 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.

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”. (translation provided). *Colón Rivera v. Triple-S Salud, Inc.*, 2020 WL 8458051, p. 7 (Puerto Rico Court of Appeals, December 22, 2020).

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 LPRA § 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* herein 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 descriptions that 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, some of which *are preliminary and not yet finalized* until an agreement is executed. These elements are the result of internal analysis and negotiation, and they are not publicly disclosed or accessible to competitors or other market participants. Public disclosure of these terms would reveal LUMA's negotiation posture, potentially undermining its position in future agreements with other developers.

30. 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.

31. 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.

iii. Other Basis for Confidential Treatment

32. Exhibit 1 also contains the names and contact information of individuals. The protection of this information 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 protect the right to control personal information and distinctive traits, which 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). In addition, the Puerto Rico Open Government Data Act, Act 122-2019, Article 4(vi) and (xi) (providing that the following information is excepted from public disclosure: information the disclosure of which could invade the privacy of third parties or affect their fundamental rights, as well as any type of information related to the street address, telephone number, emergency contact information, social security number, credit card number, tax and/or financial information, bank activity, confidential information of private third parties, trade secrets, tax returns, debt, or pin number, which is collected or maintained by a government body).

WHEREFORE, LUMA respectfully requests that the Energy Bureau **accept** the attached *Exhibit 1* and **deem** LUMA in compliance with the Energy Bureau's order of September 17, 2025; **find** that *Exhibit 1* constitutes Validated Confidential Information; and **order** the Clerk of the Energy Bureau to maintain *Exhibit 1* under confidentiality.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on the 24th 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@jrsp.pr.gov, oramos@pmaalaw.com, and agraitfe@agraitlawpr.com.



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Exhibit 1

[Submitted under Seal of Confidentiality]