

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

NEPR Received: Sep 26, 2025 9:35 PM
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IN RE:
LUMA’S ACCELERATED STORAGE
ADDITION PROGRAM

CASE NO. NEPR-MI-2024-0002

**SUBJECT: Informative Motion and
Request for Modification of Resolution and
Order of September 26, 2025**

**INFORMATIVE MOTION AND REQUEST FOR MODIFICATION OF
RESOLUTION AND ORDER OF SEPTEMBER 26, 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:

1. Today, the Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order (“September 26th Resolution”) determining to “STAY SINE DIE all actions in the instant case”. *See* September 26th Motion, p. 1. The Energy Bureau remarked that no Accelerated Storage Addition Program (“ASAP”) Standard Offer Phase 1 (“SO1”) Agreements have been executed to date and expressed the belief that “it would be futile at this time” to continue further actions in this case because the execution of these agreements is outside their control. *See id.* The Energy Bureau also highlighted the “ongoing proceedings related to renewable energy procurements under Executive Order OE-2025-047” (“OE-2025-047”) which they indicate “provide a viable path forward to secure new generation resources within firm deadlines”. *See id.* The Energy Bureau further determined that, “if deemed appropriate, it will revisit and reopen this case as otherwise required in the public interest to ensure continuity of the ASAP Program in alignment with Puerto Rico's energy policy”, reminding LUMA and ASAP

participants that “the need for energy storage capacity is limited and depending on the outcomes of the procurement process, pursuant to Executive Order OE -2025-047, the capacity offered in the ASAP program might not be necessary”. *See id.*

2. The September 26th Resolution comes on the heels of submittals to the Energy Bureau of three of the four original SO1 Participants, in which they expressed the need for the resolution of pending issues in order to move forward. Nevertheless, it is worth noting that, based on the submittals or portions thereof that LUMA was able to review¹, all of these participants appeared to express the desire for a positive outcome.

3. For the reasons set forth in *Exhibit 1* hereto, LUMA respectfully requests this Honorable Energy Bureau to consider modifying the September 26th Resolution to allow ASAP to move forward, at a minimum with respect to SO1. As explained in more detail in Exhibit 1, LUMA did in fact reach agreement with the four original SO1 participants when LUMA submitted their original agreements to the Energy Bureau around December 2024, and it has only been in recent months that new issues have been raised regarding certain aspects of these agreements. LUMA respectfully submits that none of these issues are considered by LUMA to be significant areas of disagreement although these have resulted in slowing down the ASAP timeline. However, LUMA unequivocally confirms that it has reached an agreement to execute the SO1 Agreements with two participants. In Exhibit 1, LUMA provides a description of the agreements reached with both SO1 participants, including written proof of the communications that attest to such agreements. .

4. Without detracting from the importance and benefits of OE-2025-047, LUMA respectfully submits that OE-2025-047 does not address the BESS deployment opportunities associated with existing IPPs that are already interconnected and injecting power to the grid, such

¹ LUMA was only able to review the redacted version of one of the submittals.

as the SO1 participants. Rather, OE-2025-047 appears to limit its applicability to project proposals submitted in the Tranches. This focus results in the exclusion of the existing IPPs that are well positioned to deploy these types of projects more expeditiously. If ASAP is completely stayed, these BESS deployment opportunities may be lost.

5. For these reasons, LUMA respectfully requests this Honorable Energy Bureau to consider modifying the September 26th Resolution to, at a minimum, allow ASAP to continue forward with respect to the SO1 Agreements; the Energy Bureau may consider leaving SO2 under the stay, with the possibility of considering reactivating it in the future under the criteria set forth in the September 26th Resolution.

6. LUMA respectfully requests the honorable Energy Bureau to maintain *Exhibit 1* herein confidential as containing validated trade secret information under applicable laws and regulations, including 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").

REQUEST FOR CONFIDENTIAL TREATMENT

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

i. General Framework

7. 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).

8. 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.

9. 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).

10. 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.

11. 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.

Id. at § D (on Access to Validated Confidential Information).

12. 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.

ii. Commercially Sensitive Confidential Information

13. 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).

14. 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).

15. 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).

16. 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).

17. 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. Commercially Sensitive Confidential Information

18. *Exhibit 1* also contains proprietary commercial information that reflects LUMA’s internal strategies 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.

19. 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.

20. 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 **accept** the attached *Exhibit 1*; **grant** LUMA's request to **modify** the September 26th Order to, at a minimum, lift the stay in connection with ASAP SO1; **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 26th 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 hrivera@jrsp.pr.gov, oramos@pmaalaw.com, and agraitfe@agraitlawpr.com.



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Exhibit 1

[Submitted under Seal of Confidentiality]