

**COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY BUREAU**

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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 Excerpts from National's Responses to (a) LUMA-of-NPFGC-FEMA-16; (b) LUMA-of-NPFGC-CAPEX-40; and (c) LUMA-of-NPFGC-ACCTPAY-24

**MEMORANDUM OF LAW IN SUPPORT OF
CONFIDENTIAL TREATMENT OF EXCERPTS FROM NATIONAL'S RESPONSES
TO (A) LUMA-OF-NPFGC-FEMA-16; (B) LUMA-OF-NPFGC-CAPEX-40; AND
(C) LUMA-OF-NPFGC-ACCTPAY-24**

TO THE PUERTO RICO ENERGY BUREAU:

National Public Finance Guarantee Corporation, GoldenTree Asset Management LP, Syncora Guarantee, Inc., Assured Guaranty Inc., and the PREPA Ad Hoc Group¹ (collectively, the “Bondholders”), by and through the undersigned counsel, hereby submit this Memorandum of Law in Support of Confidential Treatment of Excerpts from National's responses to (a) LUMA-of-NPFGC-FEMA-16; (b) LUMA-of-NPFGC-CAPEX-40; and (c) LUMA-of-NPFGC-ACCTPAY-24.²

I. Background

1. On June 30, 2023, the Energy Bureau issued a Resolution and Order “to initiate [this] adjudicative process to review PREPA's rates” and opened this proceeding. *See* June 30th Order, at 2.

¹ The members of the PREPA Ad Hoc Group are listed in the *Ninth Verified Statement of the PREPA Ad Hoc Group pursuant to Bankruptcy Rule 2019*, ECF No. 5797, filed in *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, Case No. 17-BK-04780-LTS (D.P.R. Aug. 28, 2025).

² A Spanish summary of this filing is attached hereto as Appendix A, pursuant to the orders of May 9th and June 4th.

2. On February 12, 2025, the Energy Bureau issued a Resolution and Order whereby it established “the filing requirements and procedures” for the instant proceeding (the “February 12th Order”). February 12th Order, at 1. The February 12th Order established confidentiality “procedures to balance the public’s right to access information about utility rates with the legitimate need to protect certain sensitive business information.” February 12th Order, at 10. Under the February 12th Order, if “a person has the duty to disclose to the Energy Bureau information that the person considers privileged under the Rules of Evidence, the person shall identify the information, request the Energy Bureau to protect the information, and provide written arguments to support its claim for protection.” *Id.* This is consistent 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 (the “Policy on Confidential Information”).

3. Under the February 12th Order, the Energy Bureau will decide each confidentiality claim expeditiously, and, if it deems that the information merits protection, it will treat such information in accordance with Article 6.15 of Act No. 57-2014, as amended. *See* February 12th Order, at 10. In its decision, “the Energy Bureau will state (i) which information and documents are confidential or privileged; and (ii) the rules that shall be observed to duly safeguard the information.” *Id.*³

4. On August 19, 2025, the Hearing Examiner, Mr. Scott Hempling, issued an *Order on Confidentiality Matters* (the “August 19th Order”), pursuant to which information filed as a confidential trade secret will only be available to the Energy Bureau and its consultants.

³ The February 12th Order also states that the “Energy Bureau’s staff having access to Confidential Information will follow the *Puerto Rico Energy Bureau’s Internal Guidelines for the Treatment of Confidential Information*.” February 12th Order, at 10.

5. On September 25, 2025, LUMA served National with thirty-six requests for information (“ROIs”) through the Accion platform.

6. One of these ROIs was LUMA-of-NPFGC-FEMA-16, which asked Anthony Hurley, a witness in this proceeding who submitted pre-filed testimony on behalf of the Bondholders, to, among other things, “identify and explain your participation as an IEM consultant and/or Senior Advisor in consulting on development [*sic*] of a scope of work for a FEMA project.” On October 5, 2025, National timely submitted Mr. Hurley’s response to LUMA-of-NPFGC-FEMA-16 through the Accion platform, which response included a paragraph specifically describing a project that Mr. Hurley performed in connection with his prior consulting engagement with Innovative Emergency Management, Inc. (“IEM”).

7. As a consultant for IEM, Mr. Hurley was party to a Consulting Agreement that includes a confidentiality provision covering this information. *See* Attachment 1, LUMA-of-NPFGC-ACCTPAY-24 (also designated confidential). National therefore asserted confidentiality over the portion of Mr. Hurley’s response to LUMA-of-NPFGC-FEMA-16 that provided such information, and National uploaded to Accion both an unredacted confidential version as well as a redacted public version of same.

8. Another of the September 25th LUMA ROIs was LUMA-of-NPFGC-CAPEX-40, which directed Mr. Hurley to pages 12-13 of his pre-filed testimony and asked him to identify “all flaws in LUMA’s model that you indicate LUMA should correct and explain in detail how such alternative model would measure reliability benefits.” National timely served Mr. Hurley’s response to LUMA-of-NPFGC-CAPEX-40 on October 5, 2025 through the Accion platform. Mr. Hurley’s response relied in part (*i.e.*, parts of pages 6-7 and the content of Attachment 1) on information that LUMA had previously designated as confidential in this proceeding. *See LUMA’s*

Motion Submitting Public Version of LUMA's Long Term Investment Plans and Memorandum of Law in Support of Confidential Treatment of Redacted Portions, NEPR-AP-2023-0003 (August 19, 2025). Accordingly, consistent with LUMA's designation of such information, National uploaded to the Accion platform unredacted confidential and redacted public versions of Mr. Hurley's response to LUMA-of-NPFGC-CAPEX-40 and Attachment 1 thereto.

9. Another of the September 25th LUMA ROIs was LUMA-of-NPFGC-ACCTPAY-24, which asked for a copy of Mr. Hurley's "engagement contract, agreement, or engagement letter with IEM." However, as noted above, Mr. Hurley's prior Consulting Agreement with IEM includes a confidentiality provision, which makes the terms of the Consulting Agreement confidential and prohibits disclosure without the prior written consent of IEM or by court order. Mr. Hurley therefore requested IEM's consent to submit the Consulting Agreement in response to LUMA-of-NPFGC-ACCTPAY-24, and counsel for National requested a brief extension on that basis, to which counsel for LUMA consented.

10. As a condition for permitting disclosure of the Consulting Agreement, IEM redacted—even from the confidential version—certain limited information, namely: (1) personal information of IEM employees, including the name and signature of the IEM employee who executed the Consulting Agreement, the email address for IEM's accounts payable group, and Mr. Hurley's address, and (2) Mr. Hurley's billing rate for IEM when he was previously consulting for them, which IEM asserted is proprietary. National timely uploaded to the Accion platform a redacted public version of Attachment 1 to Mr. Hurley's response to LUMA-of-NPFGC-ACCTPAY-24, and a mostly unredacted confidential version of Attachment 1, with limited redactions dictated by IEM as a condition for disclosure, as discussed above.

II. Applicable Law Governing the Submission of Confidential Information

11. Section 6.15 of Act 57-2014 governs the submission of confidential information to the 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 that the information is entitled to such protection, “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.* § 6.15(a).

12. 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, the 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.* § 6.15(c).

13. However, if any document is designated as confidential “on the grounds that it is a trade secret pursuant to Act 80-2011,” then it “may only be accessed by the Producing Party and the [Energy Bureau], unless otherwise set forth by the [Energy Bureau] or any competent court.” *See* Policy on Confidential Information, Section D, as amended by the Resolution of September 16, 2016, CEPR-MI-2016-0009.

14. The Energy Bureau’s Policy on Confidential Information requires the Producing Party to identify the confidential information and file a memorandum of law explaining the legal basis and support for the request “no later than ten (10) days after filing of the Confidential Information.” *See* Policy on Confidential Information, Section A, as amended by the Resolution of September 16, 2016, CEPR-MI-2016-0009. The memorandum should 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.* ¶ 3. The party seeking confidential treatment must also submit both a redacted public version and an unredacted confidential version of the document. *Id.* ¶ 6.

III. The Redacted Excerpts from Mr. Hurley’s Responses to the Aforementioned LUMA ROIs Are Entitled to Confidential Treatment

15. The Bondholders seek confidential treatment of the information in the following table:

Document	Confidential Portions	Legal Basis for Confidentiality	Date Filed
Mr. Hurley’s response to LUMA-of-NPFGC-FEMA-16	Paragraph 2	Confidentiality clause in Consulting Agreement between IEM and Anthony Hurley, dated October 17, 2022	October 5, 2025
Mr. Hurley’s response to LUMA-of-NPFGC-CAPEX-40	Subsection (ii), <i>The specific assets that LUMA proposes to invest in do not match its own measures of historical reliability problems</i> Attachment 1	<i>LUMA’s Motion Submitting Public Version of LUMA’s Long Term Investment Plans and Memorandum of Law in Support of Confidential Treatment of Redacted Portions</i> , NEPR-AP-2023-0003 (August 19, 2025)	October 5, 2025

Document	Confidential Portions	Legal Basis for Confidentiality	Date Filed
Mr. Hurley's response to LUMA-of-NPFGC-ACCTPAY-24	Attachment 1	Consulting Agreement between IEM and Anthony Hurley, dated October 17, 2022 Trade Secret, Act 80-2011, 10 LPRA §§ 4131-4144 Right to privacy (<i>see e.g.</i> , Const. ELA, Art. II, Sections 8 and 10)	October 5, 2025

16. ***Mr. Hurley's response to LUMA-of-NPFGC-FEMA-16.*** Bondholders respectfully request confidential treatment of the second paragraph in Mr. Hurley's response to LUMA-of-NPFGC-FEMA-16. That paragraph specifically described a project that Mr. Hurley performed in connection with his prior consulting engagement with IEM. The definition of confidential information in the Consulting Agreement includes work product, which would cover a detailed description of Mr. Hurley's work on a project pursuant to that engagement.

17. ***Mr. Hurley's response to LUMA-of-NPFGC-CAPEX-40.*** Bondholders respectfully request confidential treatment of (a) Subsection (ii) under the heading titled "The specific assets that LUMA proposes to invest in do not match its own measures of historical reliability problems" on pages 6-7, and (b) Attachment 1. Both Attachment 1 and Subsection (ii) on pages 6-7 expressly rely on and/or discuss material that LUMA previously designated as confidential in this proceeding, through its *Motion Submitting Public Version of LUMA's Long Term Investment Plans and Memorandum of Law in Support of Confidential Treatment of Redacted Portions*, NEPR-AP-2023-0003 (August 19, 2025). Public disclosure of this information prior to the Energy Bureau's adjudication of LUMA's request for confidential treatment would prejudice LUMA's request. Should the Energy Bureau ultimately determine that the material

LUMA previously designated as confidential is not entitled to confidential treatment, the Bondholders will submit an updated public response to LUMA-of-NPFGC-CAPEX-40 that removes these redactions.

18. *Mr. Hurley's response to LUMA-of-NPFGC-ACCTPAY-24.* Bondholders respectfully request confidential treatment of Attachment 1 to Mr. Hurley's response to LUMA-of-NPFGC-ACCTPAY-24, which is a copy of the prior Consulting Agreement between IEM and Anthony Hurley, dated October 17, 2022. The Consulting Agreement expressly states that the terms of the Consulting Agreement are confidential information that cannot be disclosed without the prior written consent of IEM or by court order, and as such the terms should be treated as confidential. In addition, as discussed above, IEM conditioned its consent to the disclosure of the Consulting Agreement on limited redaction—even in the confidential version—of Mr. Hurley's prior hourly rate with IEM and personal information of IEM employees.

19. The Consulting Agreement and its terms—including in particular information as to Mr. Hurley's prior hourly rate with IEM—are also entitled to confidential treatment because they are trade secrets. Under the *Industrial and Trade Secret Protection Act of Puerto Rico*, Act 80-2011, 10 LPRA §§ 4131-4144, trade secrets include any information:

(a) That has a present or a potential independent financial value or *that provides a business advantage*, insofar as such information is not common knowledge or readily accessible through proper means by persons who could make a monetary profit from the use or disclosure of such information, and

(b) for which reasonable security measures have been taken, as circumstances dictate, to maintain its confidentiality.

Id. § 4132, Section 3 of Act 80-2011 (emphasis added).

20. The terms of the Consulting Agreement, including Mr. Hurley's prior hourly billing rate for IEM, would provide a business advantage to competitors who may seek to retain

consultants who are also sought by IEM. Furthermore, the information is not generally known or readily accessible to competitors or the public. Reasonable measures have been taken to maintain the confidentiality of this information, including the confidentiality clause in the agreement.

21. Finally, the name and signature of the IEM employee who executed the Consulting Agreement, the email address for IEM's accounts payable group, and Mr. Hurley's address constitute personal information that should be protected from disclosure under norms of privacy. Puerto Rico courts have held that P.R. Const. art. II §§ 8, 10 protect the right to control personal information and apply against private parties. *See, 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, as discussed above, IEM conditioned its consent to the disclosure of the Consulting Agreement on nondisclosure of this redacted information.

WHEREFORE, for the reasons stated above, the Bondholders respectfully request that the Energy Bureau grant the Bondholders' request to keep the above-identified portions of National's responses to (a) LUMA-of-NPFGC-FEMA-16; (b) LUMA-of-NPFGC-CAPEX-40; and (c) LUMA-of-NPFGC-ACCTPAY-24 under seal of confidentiality.

RESPECTFULLY SUBMITTED,

THIS 10th DAY OF OCTOBER 2025

CERTIFICATE OF SERVICE: We hereby certify that the foregoing petition was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System, and courtesy copies were sent via electronic means to mvalle@gmlex.net; arivera@gmlex.net; jmartinez@gmlex.net; jgonzalez@gmlex.net; katiuska.bolanos-lugo@us.dlapiper.com; Yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com; carolyn.clarkin@us.dlapiper.com; andrea.chambers@us.dlapiper.com; sromero@sbgblaw.com; gcastro@sbgbllaw.com; jennalvarez@sbgbllaw.com; jfr@sbgbllaw.com; regulatory@genera-pr.com; legal@genera-pr.com; hriviera@jrspr.gov; contratistas@jrspr.gov; victorluisgonzalez@yahoo.com; Cfl@mcvpr.com; nancy@emmanuelli.law; jrinconlopez@guidehouse.com; Josh.Llamas@fticonsulting.com; Anu.Sen@fticonsulting.com; Ellen.Smith@fticonsulting.com; Intisarul.Islam@weil.com; kara.smith@weil.com; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; jan.albinolopez@us.dlapiper.com; Rachel.Albanese@us.dlapiper.com; varoon.sachdev@whitecase.com; jdiaz@sbgbllaw.com; javrua@sesapr.org; Brett.ingerman@us.dlapiper.com; agraitfe@agraitlawpr.com; jpouroman@outlook.com; epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; matt.barr@weil.com; Robert.berezin@weil.com; Gabriel.morgan@weil.com; corey.brady@weil.com; lramos@ramoscruzlegal.com; tlauria@whitecase.com; gkurtz@whitecase.com; ccolumbres@whitecase.com; isaac.glassman@whitecase.com; tmacwright@whitecase.com; jcunningham@whitecase.com; mshepherd@whitecase.com; jgreen@whitecase.com; hburgos@cabprlaw.com; dperez@cabprlaw.com; howard.hawkins@cwt.com; mark.ellenberg@cwt.com; casey.servais@cwt.com; bill.natbony@cwt.com; thomas.curtin@cwt.com; escalera@reichardescalera.com; riverac@reichardescalera.com; susheelkirpalani@quinnemanuel.com; erickay@quinnemanuel.com; dmonserrate@msglawpr.com; fgierbolini@msglawpr.com; rschell@msglawpr.com; eric.brunstad@dechert.com; Stephen.zide@dechert.com; David.herman@dechert.com; Julia@londoneconomics.com; Brian@londoneconomics.com; luke@londoneconomics.com; juan@londoneconomics.com; estrada@gibsondunn.com; LShelfer@gibsondunn.com; jnieves@cstlawpr.com; arrivera@nuenergypr.com; apc@mcvpr.com; shempling@scotthemplinglaw.com; rsmithla@aol.com; guy@maxetaenergy.com; jorge@maxetaenergy.com; rafael@maxetaenergy.com; dawn.bisdorf@gmail.com; msdady@gmail.com; mcranston29@gmail.com; ahopkins@synapse-energy.com; clane@synapse-energy.com; kbailey@acciongroup.com; hjudd@acciongroup.com; zachary.ming@ethree.com; PREBconsultants@acciongroup.com; carl.pechman@keylogic.com; bernard.neenan@keylogic.com; tara.hamilton@ethree.com; aryeh.goldparker@ethree.com; roger@maxetaenergy.com; Shadi@acciongroup.com.

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Appendix A

**RESUMEN DE: MEMORANDO DE DERECHO EN APOYO DE
TRATAMIENTO CONFIDENCIAL DE EXTRACTOS DE LAS RESPUESTAS DE
NATIONAL A (A) LUMA DE NPFGC-FEMA-16; (B) LUMA DE NPFGC-CAPEX-40; Y
(C) LUMA DE NPFGC-ACCTPAY-24**

AL NEGOCIADO DE ENERGÍA DE PUERTO RICO:

Comparecen National Public Finance Guarantee Corporation, GoldenTree Asset Management LP, Syncora Guarantee, Inc., Assured Guaranty Inc., y PREPA Ad Hoc Group (colectivamente, los "Bonistas"). El 5 de octubre de 2025, National presentó la respuesta confidencial del Sr. Hurley a LUMA de NPFGC-FEMA-16, cuya respuesta incluía un párrafo que describía específicamente un proyecto que el Sr. Hurley realizó en relación con su compromiso de consultoría anterior con Innovative Emergency Management, Inc. ("IEM"). Además, National entregó versiones confidenciales y públicas no redactadas de la respuesta del Sr. Hurley a LUMA de NPFGC-CAPEX-40 y el Anejo 1 a la misma.

El Acuerdo de Consultoría anterior del Sr. Hurley con IEM incluye una disposición de confidencialidad, que prohíbe la divulgación sin el consentimiento previo por escrito de IEM o por orden judicial. El Sr. Hurley solicitó el consentimiento de IEM para presentar el Acuerdo de Consultoría en respuesta a LUMA-of-NPFGC-ACCTPAY-24. Como condición, IEM redactó cierta información limitada. National sometió una versión pública redactada del Anejo 1 a la respuesta del Sr. Hurley a LUMA de NPFGC-ACCTPAY-24, y una versión confidencial del Anejo 1, con redacciones limitadas dictadas por IEM. Los Bonistas solicitan un tratamiento confidencial de lo siguiente:

1. El segundo párrafo de la respuesta del Sr. Hurley a LUMA de NPFGC-FEMA-16. La definición de información confidencial en el Acuerdo de Consultoría incluye el producto del trabajo.

2. Subsección (ii) bajo el título "Los activos específicos en los que LUMA propone invertir no coinciden con sus propias medidas de problemas históricos de confiabilidad" en las páginas 6-7 y el Anejo 1. Si el Negociado de Energía finalmente determina que el material que LUMA designó previamente como confidencial no tiene derecho a un tratamiento confidencial, los Bonistas presentarán una respuesta pública actualizada a LUMA de NPFGC-CAPEX-40 que elimine estas redacciones.

3. Anejo 1 a la respuesta del Sr. Hurley a LUMA de NPFGC-ACCTPAY-24, que es una copia del Acuerdo de Consultoría anterior entre IEM y Anthony Hurley, con fecha del 17 de octubre de 2022.

El Acuerdo de Consultoría y sus términos, incluida en particular la información sobre la tarifa por hora anterior del Sr. Hurley con IEM, también tienen derecho a un tratamiento confidencial porque son secretos comerciales. Se han tomado medidas razonables para mantener la confidencialidad de los términos del Acuerdo de Consultoría, incluida la cláusula de confidencialidad del acuerdo. Finalmente, el nombre y la firma del empleado de IEM que ejecutó el Acuerdo de Consultoría, la dirección de correo electrónico del grupo de cuentas por pagar de IEM y la dirección del Sr. Hurley constituyen información personal que debe protegerse de la divulgación según las normas de privacidad.