

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

IN RE:

**LUMA’S ACCELERATED STORAGE
ADDITION PROGRAM (“ASAP”)**

CASE NO. NEPR-MI-2024-0002

**SUBJECT: Submittal of Additional
Information in Support of Motion Filed by
LUMA on October 10, 2025, Request for
Modification of October 3, 2025, Order, and
Request for Confidential Treatment**

NEPR

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**MOTION TO SUBMIT ADDITIONAL INFORMATION IN SUPPORT OF MOTION
FILED BY LUMA ON OCTOBER 10, 2025, REQUEST FOR MODIFICATION OF
OCTOBER 3, 2025, ORDER, AND REQUEST FOR CONFIDENTIAL TREATMENT**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

A. Relevant Procedural History

1. On October 3, 2025, the Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order (“October 3rd Order”) whereby it vacated the stay of the instant proceeding and ordered LUMA “to offer the Phase 1 Standard Offer Agreement (“SO1”) to Phase 2 proponents that are interested and agree without reservations to accept the terms established thereby.” *See* October 3rd Order, p. 1. The Energy Bureau also directed LUMA to identify and notify potential candidates within five (5) days from the notification of the October 3rd Order, and within five (5) days thereafter, proceed with the submittal of such contracts before the Energy Bureau for its review and approval. *See id.*

2. On October 12, 2025, LUMA filed an *Informative Motion and Request for Modification of October 3, 2025 Order* (“October 12th Motion”) in which LUMA informed that it had identified several issues associated with the SO1 Agreement template that needed to be addressed and/or resolved prior to distribution of the SO1 Agreement to Phase 2 proponents, including issues relating to interconnection costs, conditions precedent to agreement effectiveness, and cost recovery mechanisms, and that LUMA was in the process of more comprehensively identifying and analyzing all the implications of the PREB Order and would be submitting this analysis to the Energy Bureau no later than October 17, 2025, along with LUMA's recommendations. Therefore, LUMA requested this Honorable Energy Bureau to modify the October 3rd Order to suspend the distribution of the SO1 Agreement to potential Phase 2 participants until after the resolution of the pending issues that would be more fully identified and discussed in the mentioned upcoming motion, so that the Energy Bureau can decide on the terms that will better support the successful execution of the ASAP program by these Phase 2 participants.

II. Additional Information and Requests

3. In accordance with the October 12th Motion, LUMA hereby submits as Exhibit 1 the discussion of issues associated with the SO1 Agreement template that need to be addressed and clarifications that need to be made before distribution of this agreement to Phase 2 proponents. These issues arise as a result of the different situation of Phase 2 projects as compared to Phase 1 projects. In addition, the clarifications are needed to address uncertainties that have been identified during the ASAP process.

4. As explained in Exhibit 1, to address these needs, LUMA is requesting the Energy Bureau to approve the Confirmation Statements included in Exhibit 1, which are divided into two

categories. The first category addresses issues that can be resolved by revising the SO1 template, referred to hereinafter as the Updated SO1. The proposed Updated SO1 is attached as Exhibit 2, in clean and redline version showing the changes made to the approved SO1 template. LUMA notes that the changes are limited and directed at: (a) addressing two key differences between the Phase 1 and Phase 2 projects that are not contemplated in the SO1 template; (b) more effectively incorporating certain changes already approved by this Honorable Energy Bureau with respect to the SO1 Agreements of the Fifth and Sixth participants¹; and (c) including two additional clarifications and minor corrections for more clarity of the document (but which do not change its substantive terms).

5. The second category pertains to matters related only to the rules of ASAP or implementation of the program that do not require any revisions to the agreement but provide more clarity to participants moving forward. LUMA respectfully submits that addressing these issues and clarifications as set forth in Exhibit 1 will result in an agreement that is more favorable to the ratepayer and provide more certainty to proponents to fully assess the decision criteria and potential risk factors to enable their swift decision on their desired participation in the ASAP program.

6. Consistent with these objectives, LUMA proposes the following rules apply with respect to the offer of the Updated SO1 to expedite and provide certainty and finality to the process:

- a. Following the Energy Bureau's approval of the Confirmation Statements in Exhibit 1 and the draft Updated SO1 in Exhibit 2, LUMA will submit the Updated SO1 to the SO2 proponents, along with the approved Confirmation Statements, and provide them with thirty (30) days to agree to the Updated SO1 without reservation. There

¹ See Resolution and Order of August 29, 2025.

will be no negotiated changes or amendments to the Updated SO1 approved by the Energy Bureau. The SO2 Agreement will be deemed withdrawn and no longer in effect.

- b. Following agreement by the proponent and receipt of their project specific information, the Updated SO1 would be finalized for the proponent and submitted to the Energy Bureau for approval.
- c. After the mentioned thirty (30) day period, there will be no further proponents eligible for the Updated SO1; LUMA will not entertain discussions with any proponents interested in submitting a request at any future date for an SO2 Agreement.
- d. The participants with approved SO1 Agreements shall have the option to request that it be revised to conform with the Updated SO1 or be substituted with the Updated SO1.

7. LUMA respectfully submits that the resolution and definition of the issues and clarification of the matters identified in Exhibit 1, prior to the distribution of the SO1 to Phase 2 participants will provide greater certainty and ensure that the transactions reflect conditions that guarantee affordable, just and reasonable energy costs for all consumers and pursue energy storage goals that best suit the needs of Puerto Rico.

8. LUMA respectfully requests the honorable Energy Bureau to maintain Exhibits 1 and 2 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").

III. Request for Confidential Treatment

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

i. General Framework

9. 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).

10. 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.

11. 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).

12. 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.

13. 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).

14. 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

15. 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).

16. 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).

17. 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).

18. 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).

19. 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

20. Exhibits 1 and 2 contain 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.

21. LUMA has taken deliberate steps to protect the confidentiality of this information, including limiting access to authorized personnel, labelling 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 **take notice** of the aforementioned; **approve or confirm** agreement with the Confirmation Statements in Exhibit 1 to this Motion; **modify** the October 3rd Order to provide for the submittal of the Updated SO1 in

Exhibit 2 of this Motion to Phase 2 proponents following the Energy Bureau's approval of the Updated SO1 in Exhibit 2 and the Confirmation Statements in Exhibit 1 to this Motion, in accordance with the process and rules described in Exhibit 1 and this Motion; **find** that Exhibits 1 and 2 constitute Validated Confidential Information; and **order** the Clerk of the Energy Bureau to maintain Exhibit 1 and 2 under confidentiality.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 17th day of October 2025.

We hereby certify that we filed 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@jrspr.pr.gov, oramos@pmalaw.com, and agraitfe@agraitlawpr.com.



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Exhibit 1

[Submitted under Seal of Confidentiality]

Exhibit 2

[Submitted under Seal of Confidentiality]