

**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

NEPR

Received:

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**MOTION IN COMPLIANCE WITH THE OCTOBER 21, 2025, RESOLUTION AND ORDER
AND MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL
TREATMENT**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") through its undersigned legal counsel and respectfully informs and requests as follows:

I. Background

1. On September 30, 2025, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") granted the proponents of two Phase 1 projects five (5) days to file with PREPA all outstanding documentation needed to execute the agreements ("September 30 Resolution"). The Energy Bureau further ordered PREPA to, within five (5) days of receiving all the required documentation about these two projects and approval from the Financial Oversight and Management Board ("FOMB"), file the executed contracts before the Energy Bureau. The proponents of the two Phase 1 projects are EcoEléctrica BESS, LLC ("EcoEléctrica"), and Polaris Power US, Inc., aka Punta Lima Wind Farm (jointly "Polaris").

2. On October 21, 2025, the Energy Bureau issued a Resolution and Order ("October 21 Resolution") ordering PREPA to submit a detailed report outlining the status of the two (2) Phase 1 project agreements and explaining the reasons for their non-execution, within five (5) days from the notification of this Resolution and Order, due today.

3. In compliance with the October 21 Resolution, below, PREPA provides a detailed report on the status of EcoEléctrica and Polaris projects.

II. EcoEléctrica

4. On October 1, 2025, LUMA Energy, LLC ("LUMA") and EcoEléctrica resolved certain contractual issues regarding a *Battery Energy Storage System* ("BESS") *Standard Offer Agreement* between PREPA and EcoEléctrica.

5. On October 3, 2025, PREPA sent a letter to Mr. Jaime A. El Koury, General Counsel of the FOMB, requesting approval of the BESS Agreement between PREPA and EcoEléctrica. With the letter PREPA attached, the draft BESS Agreement to the FOMB. Therefore, the agreement is presently pending review and approval by the FOMB to conform with statutory compliance and facilitate the allocation of public funds for the energy storage initiatives. See *Exhibit 1* (PREPA October 3-Letter to FOMB).

III. Polaris

6. On August 5, 2025, LUMA submitted to the Energy Bureau for its review and approval one additional draft *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 as the Fifth Participant (aka "Polaris").

7. On August 8, 2025, the Energy Bureau issued a Resolution and Order ("August 8 Resolution") approving the SO1 Agreement with Polaris and issued directives to finalize the referenced contract and submit a final version of the contract before PREPA's Governing Board for its approval.

8. On this same day, August 8, 2025, LUMA filed a *Supplement to Request submitted on August 5, 2025*, submitting a confidential document informing the key modifications to the SO1 Agreement it had previously filed in its August 5 Motion.

9. On August 15, 2025, in compliance with the August 8 Resolution, LUMA filed a *Motion submitting Evidence of Submittal of Finalized Draft of Phase 1 Agreement with Fifth Participant to PREPA Board of Directors, in compliance with Resolution and Order of August 8, 2025*. In this Motion, LUMA informed the Energy Bureau that it submitted evidence to PREPA's Board of Directors of the finalized version of the SO1 Agreement negotiated with Polaris.

10. On August 27, 2025, LUMA filed an *Informative Motion and Request for Confirmation or Approval from the Energy Bureau relating to Certain ASAP Matters* ("August 27 Motion") to obtain the Energy Bureau's approval or confirmation relating to the LUMA's proposed approach with respect to three matters related to the SO1 Agreement arising in LUMA's discussions with the SO1 developers, as well as providing an update on ASAP matters.

11. On August 29, 2025, and in response to the August 27 Motion, the Energy Bureau issued a Resolution and Order authorizing certain additional modifications to the SO1 Agreement form. The Energy Bureau further ordered LUMA to submit evidence of approval by PREPA's Board of Directors within three (3) days of such approval, so the Energy Bureau is able to grant its final approval to Polaris' SO Phase 1 Agreement.

12. On September 26, 2025, the Energy Bureau issued a Resolution and Order ("September 26 Resolution") determining to *stay sine die* all actions because LUMA and the developers are not aligned on key terms and implementation requirements, leaving the projects stalled. However, the Energy Bureau warned that it did not constitute a dismissal of the case.

13. On September 26, 2025, LUMA filed an *Informative Motion and Request for Modification of Resolution and Order of September 26, 2025* ("September 26 Motion"), requesting the Energy Bureau modify its September 26 Resolution to allow LUMA to continue with the SO1 Agreements. *Exhibit 1* of the September 26 Motion specifies two projects that are part of the SO1 Agreements, already approved by the Energy Bureau, alleging they are ready to be signed in the next five (5) days. LUMA requested that Exhibit 1 of the September 26 Motion be treated as confidential information, given that the information reflects internal strategies and ongoing negotiating terms.

14. On October 15, 2025, PREPA received a letter from Polaris, along with accompanying documents concerning a proposed modification to Exhibit 2 of the SO1 Agreement, a proposed expanded capacity concept.

15. On October 21, 2025, PREPA sent a letter to Polaris 'counsel stating that PREPA had no objection to the proposed modification to Exhibit 2 of the SO1 Agreement, as described in LUMA's August 8 Motion. PREPA also stated to Polaris in the letter that the implementation of the proposed modification remains subject to the review and approval of LUMA, given its operational responsibilities under the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (T&D OMA), executed on June 22, 2020.

16. On October 24, 2025, LUMA and Polaris filed a *Joint Motion to Request Approval of Clarification to Fifth Participant's Phase I Standard Offer Agreement*. In this Motion, LUMA and Polaris requested the Energy Bureau to approve a proposed clarification addressing the methodology for demonstrating Tested Storage Capacity ("TSC") if a Resource Provider exercises its option to pursue expanded capacity under the SO1 Agreement.

IV. Request for Confidential Treatment

17. PREPA respectfully requests confidential treatment of Exhibit 1. The exhibit contains ongoing deliberative materials as the parties are still in the negotiation process. Disclosure at this stage of Exhibit 1 would undermine the integrity of the decision-making process and is, therefore, protected under the deliberative process privilege until the negotiation process concludes.

18. Although documents held by public corporations such as PREPA are generally presumed to be public, access to such documents is not absolute. The Puerto Rico Supreme Court has recognized that only documents that truly enjoy public status are subject to mandatory disclosure. Bhatia Gautier v. Gobernador, 199 D.P.R. 59, 82 (2017); Ortiz v. Director de la Administración de los Tribunales, 152 D.P.R. 161 (2000).

19. According to Bhatia Gautier v. Gobernador, the government may validly withhold information when (i) a law so authorizes; (ii) the information is protected by evidentiary privileges; (iii) its disclosure may harm third parties' fundamental rights; (iv) it identifies a confidential source; or (v) it qualifies as "official information" under Rule 514 of Evidence. *Id.* at 83.

20. The Puerto Rico Supreme Court has expressly held that "documents that pertain to pre-decisional and deliberative processes may be shielded from public disclosure." *Id.* at 86. This deliberative process privilege protects materials that are (i) pre-decisional—created before the agency's final determination, and (ii) deliberative—reflecting internal opinions, assessments, and recommendations critical to policy formulation.

21. In addition, Article 4(iv) of the Puerto Rico Government Open Data Act, Act 122-2019, codified at 3 L.P.R.A. § 9894, explicitly exempts from disclosure "[i]nformation and official information related to decision-making in public policy-making processes, as recognized by case law," including deliberative materials.

22. Below is a summary of the information for which PREPA seeks confidential treatment:

File	Summary of Legal Basis for Confidential Treatment
Exhibit 1- PREPA's October 3, 2025, letter, with draft BESS Agreement as an attachment.	Deliberative material

23. PREPA respectfully requests that Exhibit 1 remain confidential until the negotiation process concludes and a final contract is executed. The proposed contract is still a draft, subject to the Energy Bureau's review and approval.

24. PREPA reiterates that it remains committed to the execution of the ASAP agreements and to the timely integration of BESS resources; however, responsibility for the current delay rests with the developers' deliverables and LUMA's negotiations, not with PREPA.

WHEREFORE, it is respectfully requested that the Energy Bureau take notice of PREPA's diligent actions and the developers' pending compliance and **DEEM** PREPA in compliance with its October 21 Resolution.

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, on the 27th day of October, 2025.

CERTIFICATE OF SERVICE: We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System

at <https://radicacion.energia.pr.gov/login>, and courtesy copies were sent via e-mail to LUMA Energy, LLC through its counsels of record at: RegulatoryPREBorders@lumapr.com; katuska.bolanos-lugo@us.dlapiper.com; laura.rozas@us.dlapiper.com; yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com; javier.vazquez@oneillborges.com; amilkar.cruz@oneillborges.com; oramos@pmalaw.com; antonio.collazo@oneillborges.com; mgarcia@pmalaw.com; apc@mcvpr.com; cfl@mcvpr.com.

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