

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

NEPR

Received:

Nov 3, 2025

10:34 PM

IN RE:

LUMA'S ACCELERATED STORAGE
ADDITION PROGRAM

CASE NO. NEPR-MI-2024-0002

**SUBJECT: Memorandum of Law in Support
of Request for Confidential Treatment of
Exhibits 1 and 2 Submitted on October 24,
2025**

**MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR CONFIDENTIAL
TREATMENT OF EXHIBITS 1 AND 2 SUBMITTED ON OCTOBER 24, 2025**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME now LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as "LUMA"), and respectfully state and request the following:

I. Introduction

1. On October 24, 2025, LUMA and Polaris Power US, Inc. ("Polaris") filed a *Joint Motion to Request Approval of Clarification to Fifth Participant's Phase I Standard Offer Agreement* ("October 24th Motion") in which LUMA and Polaris submitted two documents, filed as Exhibits 1 and 2 ("October 24th Exhibits 1 and 2"), containing the SO1 Agreement, in clean and redline versions, respectively, of the Accelerated Storage Addition Program ("ASAP") Phase 1 Standard Offer Agreement ("SO1 Agreement") with Polaris. These documents incorporated a proposed revised clause of the SO1 Agreement addressing the methodology to demonstrate Tested Storage Capability ("TSC") of the Storage Facility in the situation in which the resource provider seeks to use expanded capacity.

2. In the October 24th Motion, LUMA requested the Energy Bureau to maintain the October 24th Exhibits 1 and 2 confidential as 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"), among other reasons, noting that LUMA would be submitting, within the next ten (10) days, a Memorandum of Law in support of such request for confidential treatment, in compliance with the Policy on Confidential Information.

3. LUMA submits herein the Memorandum of Law stating the legal basis for the request to treat the October 24th Exhibits 1 and 2 confidential.

II. Memorandum of Law in Support of Request for Confidential Treatment of October 24th Exhibits 1 and 2

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

1. General Framework

4. Section 6.15 of 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).

5. In connection with the duties of electric power service companies, Section 1.10 (i) of Act 17-2019 provides that electric power service companies shall submit information requested by customers, except for: (i) confidential information in accordance with the Rules of Evidence of Puerto Rico. 22 LPRA §1141i.

6. 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).

7. 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 identification of the confidential information and the filing of a memorandum of law explaining the legal basis and support 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.

8. The Energy Bureau’s Policy on Confidential Information also states the following with regards to access to Validated Confidential Information on the ground of being 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 [Bureau], unless otherwise set forth by the [Bureau] or any competent court.

Id. Section D (on Access to Validated Confidential Information).

9. 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.”

2. Commercially Sensitive Confidential Information.

10. 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).

11. 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, page. *7 (Puerto Rico Court of Appeals, December 22, 2020).

12. 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).

13. Act 80-2011 considers reasonable security measures 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 the information through the Internet, including the use of email, webpages, discussion forums and any other equivalent means.
- Id.* (translation provided).

14. 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 Confidentiality

15. LUMA respectfully submits that the October 24th Exhibits 1 and 2 contain information that should be classified as commercially sensitive information protected under Puerto Rico’s trade secret law and the Energy Bureau’s Policy on Confidential Information.

16. Exhibits 1 and 2 contain the proposed draft of the SO1 Agreements with Polaris which is *preliminary and not yet finalized*. LUMA respectfully submits that these documents should be considered confidential trade secret information until such time they are approved by the Energy Bureau and executed. Disclosure prior to such time could potentially affect the approval process and any negotiations in ASAP Phase 1 that may arise prior to such time. Therefore, it is important to maintain these documents confidential to maintain the integrity of this process.

17. 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.

18. 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.

19. Maintaining the confidentiality of the October 24th Exhibits 1 and 2 does not adversely affect the public interest. On the contrary, as mentioned, it protects the public interest in reducing electricity cost and furthers a more successful ASAP program which will lead to system reliability benefits.

20. For the reasons set forth above, LUMA is requesting that the entirety of the October 24th Exhibits 1 and 2 be maintained confidential.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned, **accept** this Memorandum of Law in support of the confidential treatment of the October 24th Exhibits 1 and 2; and **grant** the request stated herein to keep confidential the October 24th Exhibits 1 and 2.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this 3rd day of November 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; alexis.rivera@prepa.pr.gov; oramos@pmalaw.com; agraitfe@agraitlawpr.com; javier.vazquez@oneillborges.com; amilkar.cruz@oneillborges.com; antonio.collazo@oneillborges.com; mgarcia@pmalaw.com; apc@mcvpr.com; cfl@mcvpr.com.



DLA Piper (Puerto Rico) LLC
500 Calle de la Tanca, Suite 401
San Juan, PR 00901-1969
Tel. 787-945-9147
Fax 939-697-6141

/s/ Laura T. Rozas
Laura T. Rozas
RUA No. 10,398
laura.rozas@us.dlapiper.com