

**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: Informative Motion on
Verification of Drafts of Four SO1
Agreements Accepted by Phase 2
Participants Without Reservations and
Request for Confidential Treatment**

NEPR

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**INFORMATIVE MOTION ON VERIFICATION OF DRAFTS OF FOUR SO 1
AGREEMENTS ACCEPTED BY PHASE 2 PARTICIPANTS WITHOUT
RESERVATIONS 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") ordering 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 10, 2025, LUMA filed an *Informative Motion and Request for Modification of October 3, 2025 Order* ("October 10th Motion") in which LUMA informed that

several issues associated with the SO1 Agreement template needed to be addressed and/or resolved prior to distribution to Phase 2 proponents and a detailed analysis of these issues would be provided to the Energy Bureau by October 17, 2025. *See* October 10th Motion, pp. 2-3. LUMA also requested the 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. *See id.*

3. On October 17, 2025, LUMA submitted a Motion in which it further identified and discussed the issues mentioned in the October 10th Motion and the proposed solutions and requested the Energy Bureau to approve the solutions and to confirm that the SO2 Agreement was withdrawn and no longer in effect. *See 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.*

4. On October 21, 2025, the Energy Bureau issued a Resolution and Order (“October 21st Order”) in which the Energy Bureau clarified that the October 3rd Order did not seek to withdraw or invalidate the SO2 Agreement option but rather “it directed LUMA to offer Phase 1 Standard Offer Agreements to Phase 2 proponents who would accept **those terms without reservation**”. *See* October 21st Order, p. 2. The Energy Bureau then reiterated its October 3rd Order. *See id.*

5. On November 3, 2025, LUMA filed a motion informing that, pursuant to the October 21st Order, LUMA had offered the SO1 Agreement to the potential participants that had expressed interest in ASAP Phase 2 and provided these potential participants five (5) days to indicate whether they would accept the SO1 Agreement without reservations. *See Informative Motion on Compliance with Resolution and Order of October 21, 2025, and Request for*

Confidential Treatment (“November 3rd Motion”), pp. 2-3. LUMA also informed that four (4) potential participants accepted the SO1 Agreement. *See id.*, p. 3. LUMA then submitted, as an Exhibit 1, copy of the letters executed by each of these participants confirming their acceptance of the SO1 Agreement without reservations and, as an Exhibit 2, the four draft SO1 Agreements with the participants’ project information as included by each participant (the “Phase 2 SO1 Agreements”). *See* November 3rd Motion, p. 3, Exhibit 1 and Exhibit 2. LUMA further informed that LUMA was verifying the information in the draft Phase 2 SO1 Agreements to ensure they were complete and ready for the Energy Bureau’s review and approval and requested five (5) days to complete this verification. *See id.*, pp. 3 and 8-9.

6. On November 5, 2025, the Energy Bureau issued a Resolution and Order (“November 5th Order”) in which it deemed LUMA in compliance with the October 3rd Order and the October 21st Order and granted LUMA the requested five (5) days to complete the verification of the draft Phase 2 SO1 Agreements.

II. Information on Verification of Draft Phase 2 SO1 Agreements

7. In accordance with the November 3rd Motion and the November 5th Order, LUMA informs herein that it completed the verification of the draft Phase 2 SO1 Agreements and LUMA did not find any substantive changes to these draft agreements that would suggest a reservation of the acceptance of the SO1 Agreement. LUMA is re-submitting the four draft Phase 2 SO1 Agreements with complete project information, in redline version showing the changes made to the SO1 Agreement template. *See Exhibit 1*, submitted as Exhibits 1a, 1b, 1c and 1d. LUMA submits that these drafts are ready for the Energy Bureau’s review and approval.

8. LUMA respectfully requests the Energy Bureau to maintain *Exhibit 1* 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. *Exhibit 1* contains proprietary commercial information in that these documents contain negotiated terms with a private developer under the ASAP program, and the agreements with the developers are *preliminary and not yet finalized* at this time, as these will become final when 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.

22. 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; **accept** the Phase 2 SO1 Agreements in *Exhibit 1* (submitted as Exhibits 1a, 1b, 1c, and 1d) for its review and approval; **determine** that *Exhibit 1* constitutes Validated Confidential Information; and **order** the Clerk of the Energy Bureau to maintain *Exhibit 1* confidential.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 10th 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.



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Exhibit 1

[Submitted as Exhibits 1a, 1b, 1c and 1d, under seal of confidentiality]