

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

NEPR

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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
LUMA's Response to PC-of-LUMA-
OTH_OPEX-27

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
LUMA'S RESPONSE TO PC-OF-LUMA-OTH_OPEX-27**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC ("ManagementCo"), and **LUMA Energy ServCo, LLC** ("ServCo") (jointly, "LUMA"), and respectfully state and request the following:

I. Introduction and Procedural Background

1. On June 30, 2024, this Honorable Energy Bureau issued a Resolution and Order "to initiate [this] adjudicative process to review PREPA's rates" (the "June 30th Order") and opened this instant proceeding. *See* June 30th Order, p. 2.

2. Following a series of informal procedural events – including technical conferences and requests for information – aimed at receiving participants' respective insights and concerns with regards to the upcoming rate review petition, on February 12, 2025, this Energy Bureau issued a Resolution and Order ("February 12th Order"), whereby it established "the filing requirements and procedures for the rate review of the [PREPA]." *See* February 12th Order, p. 1.¹

3. In what is pertinent to the present memorandum, the February 12th Order established confidentiality "procedures to balance the public's right to access information about

¹ LUMA notes that the filing requirements issued by this Energy Bureau through its February 12th Order were subsequently modified by way of various orders.

utility rates with the legitimate need to protect certain sensitive business information.” *See* February 12th Order, p. 10. These mandate that, if in compliance with the February 12th Order, “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,”² all as required by 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”).

4. Furthermore, the February 12th Order states that the Energy Bureau will decide each confidentiality claim expeditiously and will proceed, in accordance with Article 6.15 of Act No. 57-2014, PR Laws Ann. Tit. 22 § 1054n (2025), 22 LPRA § 1054n (2025), if it deems that the protected material merits protection. *See* February 12th Order, p. 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.* On the other hand, the February 12th Order provides the following:

If the Energy Bureau denies a confidentiality claim, the Energy Bureau will also state the period after which the document or information will be available to the public. Such period will give the submitter sufficient time to seek reconsideration or any other legal recourse to prevent disclosure if PREPA disagrees with the Energy Bureau’s decision.³

Id.

² *See* February 12th Order, p. 10.

³ Lastly, the February 12th Order 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*.” *See* February 12th Order, p. 10.

5. More recently, on August 19, 2025, the Hearing Examiner, Mr. Scott Hempling, issued an *Order on Confidentiality Matters* (“August 19th Order”), with the aim of clarifying the terminology and treatment of confidential documents filed during discovery, in a manner consistent with the Energy Bureau’s Policy on Confidential Information. Specifically, per the August 19th Order, information filed as Critical Energy Infrastructure Information (“CEII”) will be available to participants who have a signed Non-Disclosure Agreement. On the other hand, information filed as a confidential trade secret will only be available to the Energy Bureau and its consultants.

6. As is widely known, on July 3, 2025, LUMA filed its *Motion Submitting Rate Review Petition* (“Rate Review Petition”) with this Honorable Puerto Rico Energy Bureau (“Energy Bureau”), pursuant to the filing requirements outlined by the Energy Bureau, as modified by the Hearing Examiner.

7. The filing of LUMA’s Rate Review Petition paved the way for the initiation of a discovery process in the captioned proceeding through which LUMA has received numerous requests for information from participants, intervenors, and consultants for the Energy Bureau.

8. In what is here pertinent, on August 10, 2025, consultants for the Energy Bureau served LUMA with PC-of-LUMA-OTH_OPEX-27 (“ROI OTH_OPEX-27”). Therein, and referencing LUMA’s Ex. 15.0, Q.25 of the Rate Review Petition, the Energy Bureau’s consultants requested LUMA to “[p]rovide the total projected Inventory Burden to be collected by the Materials Management program in FY2026, FY2027, and FY2028. Provide the methodology LUMA uses to forecast the Inventory Burden collected and any supporting references and calculations. Where applicable, provide your response in a live, unlocked Excel spreadsheet with all links, and formulas intact.”

9. On August 21, 2025, LUMA filed its response to ROI OTH_OPEX-27. Among other things, LUMA explained that the Inventory Burden is not collected through the materials management program; rather, the mechanism functions similarly to a materials overhead charge that is added to materials as they are issued to projects and departments. On August 26, 2025, LUMA submitted a supplemental response that included a PDF document titled *PC-of-LUMA-OTH_OPEX-27_Attachment 2* (“Attachment 2”), which comprises LUMA’s Inventory Burden Policy. Attachment 2 describes the costs that can be included in the Inventory Burden and the methodology for calculating the Inventory Burden Rate. Moreover, LUMA stated that portions of Attachment 2 include the electronic signatures of several LUMA employees. LUMA understands that protecting those signatures from public disclosure is in the public interest and aligned with Puerto Rico’s legal framework on privacy, which protects from the disclosure of personal information.

10. Accordingly, and in compliance with the Energy Bureau’s Policy on Confidential Information, LUMA filed both an “unredacted” / “confidential” version as well as a “redacted” / “public version” of Attachment 2, protecting the information deemed to be confidential. LUMA states in the response to ROI OTH_OPEX-27 that, under separate cover and expediently, it would be submitting the corresponding memorandum of law in support of the confidential treatment of Attachment 2 within the next ten (10) days.

11. In accordance with the above, LUMA is submitting below the corresponding memorandum of law that identifies and explains the legal basis for confidential treatment of Attachment 2 to LUMA’s response to ROI OTH_OPEX-27.⁴

⁴ LUMA notes that on August 22, 2025, the Energy Bureau issued a Resolution and Order (“August 22nd Order”), with subject *Conditional Acceptance of Confidentiality Claims Filed by LUMA and Genera*. Therein, the Energy Bureau provided the following conditional acceptance of confidentiality claims raised during the discovery process:

II. Applicable Laws and Regulations to Submit Information Confidentially before the Energy Bureau

12. 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” PR Laws Ann. Tit. 22 § 1054n (2025), 22 LPRA § 1054n (2025). 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).

13. In connection with the duties of electric power service companies, Section 1.10(i) of Act 17-2019⁵ further 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. PR Laws Ann. Tit. 22 § 1141i (2025), 22 LPRA § 1141i (2025).

14. 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

The Energy Bureau **CONDITIONALLY ACCEPTS** any confidentiality claims that parties make during the discovery process to facilitate the timely exchange of information. However, this conditional acceptance does not relieve the claiming party of its obligation to fully comply with the requirements for petitioning for confidentiality that the Energy Bureau establishes in its Policy on Management of Confidential Information. The Energy Bureau will make final determinations on the merits of any and all confidentiality claims prior to issuing the Final Order in this proceeding. Until that final determination, everyone must treat items labeled confidential as if the Energy Bureau had determined that they were confidential.

August 22nd Order, p. 11.

⁵ Known as the “Puerto Rico Energy Public Policy Act” (hereinafter, “Act 17-2019”).

agreement.” Section 6.15(b) of Act 57-2014, PR Laws Ann. Tit. 22 § 1054n (2025), 22 LPRA § 1054n (2025). 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 needs 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).

15. Moreover, 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 Energy Bureau’s Policy on Confidential Information requires identification of the confidential information and the filing of a memorandum of law, “no later than ten (10) days after filing of the Confidential Information,” explaining the legal basis and support for a request to file information confidentially. *See* Policy on Confidential Information, 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 that 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.

16. The Energy Bureau’s Policy on Confidential Information also states the following with regard to access to Validated Confidential Information:

2. Critical Energy Infrastructure Information (“CEII”)

The information designated by the [Energy Bureau] as Validated Confidential Information on the ground of being CEII may be accessed by the parties' authorized representatives only after they have executed and delivered the Non-Disclosure Agreement.

Those authorized representatives who have signed the Non-Disclosure Agreement may only review the documents validated as CEII at the [Energy Bureau] or the Producing Party's offices. During the review, the authorized representatives may not copy or disseminate the reviewed information and may bring no recording device to the viewing room.

[...]

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

17. Relatedly, Energy Bureau Regulation No. 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Proceedings*, 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 according to . . . Article 6.15 of Act No. 57-2015, as amended."

III. Request for Confidentiality and Supporting Arguments

18. Portions of Attachment 2 contain electronic signatures of several LUMA employees. LUMA respectfully requests that the electronic signatures of these individuals should be maintained confidentially. Disclosure raises the risk of the signatures being misused. The signatures, when combined with the employees' information, constitute personal information that must be protected. Thus, confidential treatment of these electronic signatures is in the public

interest and aligned with Puerto Rico’s legal framework on privacy which protects from the disclosure of personal information. *See e.g.*, Const. ELA, Art. II, Sections 8 and 10, which protect the right to control personal information and distinctive traits, which applies *ex proprio vigore* and against private parties. *See also 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). *See also*, Article 4(vi) of the “Puerto Rico Open Government Data Act,” Act No. 122-2019, 3 LPRA § 9894 (2025) (listing as an exception to the rule on public disclosure, “[i]nformation that, if disclosed, could constitute an invasion of privacy of a third party, or impair the fundamental rights of said third party”).

19. It is respectfully submitted that granting confidential treatment to LUMA employees’ electronic signatures in Attachment 2 does not affect the public’s or the Energy Bureau’s review of LUMA’s discovery response nor interfere with processes before this Energy Bureau. The rest of Attachment 2 is unredacted and thus, LUMA’s request to file and maintain the signatures under seal of confidentiality does not affect access to the substantive content found therein. On balance, the public interest to protect privacy weighs in favor of granting confidential treatment to certain portions of Attachment 2 to LUMA’s response to OTH_OPEX-27, as identified in the table below.

IV. Identification of Confidential Information

In compliance with the Energy Bureau’s Policy on Confidential Information, below is a table identifying the confidential information and summarizing the hallmarks of this request for confidential treatment:

Document	Confidential Portions	Legal Basis for Confidentiality	Date Filed
LUMA’s response to PC-of-LUMA- OTH_OPEX-27	Pages 6 and 13	Right to privacy (<i>see e.g.</i> , Const. ELA, Art. II, Sections 8 and 10)	August 26, 2025

PC-of-LUMA- OTH_OPEX- 27_Attachment 2.pdf			
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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 Attachment 2 to LUMA's response to ROI OTH_OPEX-27; and **grant** LUMA's request to keep the above-identified portions under seal of confidentiality.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 29th day of August, 2025.

WE HEREBY CERTIFY that this memorandum was filed using the electronic filing system of this Energy Bureau and that electronic copies will be notified to Hearing Examiner, Scott Hempling, shempling@scotthemplinglaw.com; and to the attorneys of the parties of record. To wit, to the **Puerto Rico Electric Power Authority**, through: Mirelis Valle-Cancel, mvalle@gmlex.net; Juan González, jgonzalez@gmlex.net; Alexis G. Rivera Medina, arivera@gmlex.net; Juan Martínez, jmartinez@gmlex.net; and Natalia Zayas Godoy, nzayas@gmlex.net; and to **Genera PR, LLC**, through: Jorge Fernández-Reboredo, jfr@sbgblaw.com; Giuliano Vilanova-Feliberti, gvilanova@vvlawpr.com; Maraliz Vázquez-Marrero, mvazquez@vvlawpr.com; ratecase@genera-pr.com; regulatory@genera-pr.com; and legal@genera-pr.com; **Co-counsel for Oficina Independiente de Protección al Consumidor**, hrivera@jrsp.pr.gov; contratistas@jrsp.pr.gov; pvazquez.oipc@avlawpr.com; **Co-counsel for Instituto de Competitividad y Sustentabilidad Económica**, jpouroman@outlook.com; agraitfe@agraitlawpr.com; **Co-counsel for National Public Finance Guarantee Corporation**, 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; **Co-counsel for GoldenTree Asset Management LP**, 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; **Co-counsel for Assured Guaranty, Inc.**, hburgos@cabprlaw.com; dperez@cabprlaw.com; mmcgill@gibsondunn.com; lshelfer@gibsondunn.com; howard.hawkins@cwt.com; mark.ellenberg@cwt.com; casey.servais@cwt.com; bill.natbony@cwt.com; thomas.curtin@cwt.com; **Co-counsel for Syncora Guarantee, Inc.**, escalera@reichardescalera.com; arizmendis@reichardescalera.com; riverac@reichardescalera.com; susheelkirpalani@quinnemanuel.com; erickay@quinnemanuel.com; **Co-Counsel for the PREPA Ad Hoc Group**, dmonserrate@msglawpr.com; fgierbolini@msglawpr.com; rschell@msglawpr.com; eric.brunstad@dechert.com; Stephen.zide@dechert.com; david.herman@dechert.com; michael.doluisio@dechert.com; stuart.steinberg@dechert.com; **Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica**, nancy@emmanuelli.law; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; monica@emmanuelli.law; cristian@emmanuelli.law; lgnq2021@gmail.com; **Official Committee of Unsecured Creditors of PREPA**, jcasillas@cstlawpr.com; jnieves@cstlawpr.com; **Solar and Energy Storage Association of Puerto Rico**,

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