

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

**IN RE: PUERTO RICO ELECTRIC
POWER AUTHORITY RATE REVIEW**

NEPR

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CASE NO.: NEPR-AP-2023-0003

SUBJECT: Memorandum of Law in
Support of Confidential Treatment of
LUMA's Response to PC-of-LUMA-TRS-
5

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
LUMA'S RESPONSE TO PC-OF-LUMA-TRS-5**

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 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 8, 2025, consultants for the Energy Bureau served LUMA with PC-of-LUMA-TRS-5 (“ROI TRS-5”). Therein, and referencing LUMA’s Ex. 5.15 of the Rate Review Petition, the Energy Bureau’s consultants requested that LUMA “provide an itemization of every project and activity included in PBUT 8 by FY year, capital expense, and operational expense for the Optimal Budget and identify which of those will be eliminated by the Constrained Budget”.

9. On August 20, 2025, LUMA filed its response to ROI TRS-5. LUMA explained that, for fiscal years 2026 through 2028, PBUT8 will focus on wildfire mitigation work for

substations associated with feeders located in high fire-risk zones. Together with its response, LUMA filed an excel document titled *PC-of-LUMA-TRS-5_Attachment 1* (“Attachment 1”), containing a list of the substations that LUMA has identified and prioritized. LUMA stated that said attachment contains confidential information constituting Critical Energy Infrastructure Information (“CEII”) that garners protection from public disclosure pursuant to the Energy Bureau’s Policy on Confidential 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 1 protecting the information deemed to be confidential. LUMA informed that, under separate cover and expediently, it would be submitting the corresponding memorandum of law in support of the confidential treatment of Attachment 1 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 1 to LUMA’s response to ROI TRS-5.⁴

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

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:

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.

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 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

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

[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 who seeks confidential treatment of information filed with the Energy Bureau must also file both “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 regards 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. Act No. 40-2024, better known as the *Commonwealth of Puerto Rico Cybersecurity Act*, defines “Critical Infrastructure” (“Act 40-2024”) as those “services, systems, resources, and essential assets, whether physical or virtual, the incapacity or destruction of which would have a debilitating impact on Puerto Rico’s cybersecurity, health, economy, or any combination thereof.” PR Laws Ann. Tit. 3 § 10124(p) (2024), 3 LPRA § 10124(p) (2024).⁶ Generally, CEII or critical

⁶ With regards to Act 40-2024’s applicability to LUMA, as Operator of the T&D System, said statute provides the following:

The provisions of this chapter shall apply to the Executive Branch including all departments, boards, instrumentalities, commissions, bureaus, offices, agencies, administrations or bodies, political subdivisions, public corporations, and municipalities. **It shall likewise apply to every natural or juridical person doing business or having contracts with the Government including, but not limited to, private persons performing public services and duties**, but only with respect to the public services and duties being performed; any public or private administration exercise in which

infrastructure information is exempted from public disclosure because it involves assets and information, which poses public security, economic, health, and safety risks. Federal Regulations on CEII, particularly, 18 C.F.R. § 388.113, states that:

Critical energy infrastructure information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

- (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
- (ii) Could be useful to a person in planning an attack on critical infrastructure;
- (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and
- (iv) Does not simply give the general location of the critical infrastructure.

Id.

19. Additionally, “[c]ritical electric infrastructure means a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.” *Id.* Finally, “[c]ritical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.” *Id.*

20. The Critical Infrastructure Information Act of 2002, 6 U.S.C. §§ 671-674, part of the Homeland Security Act of 2002, protects critical infrastructure information (“CII”).⁷ CII is

public resources or funds were committed or invested (directly or indirectly), or in which any public servant exercised his authority with regards to the data collected as a result of such activities.

Section 2 of Act 40-2024, PR Laws Ann. Tit. 3 § 10122 (2025), 3 LPRA § 10122 (2025) (emphasis ours).

⁷ Regarding protection of voluntary disclosures of critical infrastructure information, 6 U.S.C. § 673, provides in pertinent part, that CII:

(A) shall be exempt from disclosure under the Freedom of Information Act;

defined as “information not customarily in the public domain and related to the security of critical infrastructure or protected systems” 6 U.S.C. § 671 (3).⁸

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this part, except—

- (i) in furtherance of an investigation or the prosecution of a criminal act; or
- (ii) when disclosure of the information would be--

- (I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

- (II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the Government Accountability Office;

(E) shall not, be provided to a State or local government or government agency; of information or records;

- (i) be made available pursuant to any State or local law requiring disclosure of information or records;
- (ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or
- (iii) be used other than for the purpose of protecting critical Infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act.

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

⁸ CII includes the following types of information:

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of

21. Attachment 1 to LUMA's response to TRS-5 constitutes CEII, because it identifies eleven (11) substations, with their respective substation IDs – associated with feeders located in high fire-risk zones as identified through fire mitigation studies. This information is not common knowledge, is not made publicly available, and if disclosed to the public, may reveal vulnerabilities of the electric system that could potentially be helpful to a person seeking to cause harm to the system, such as someone planning an attack on these or other energy infrastructure facilities interconnected with or served by these facilities.

22. The CEII designation of this information is a reasonable and necessary measure to protect critical infrastructure and enable LUMA to leverage the information and assessment on critical infrastructures without external threats. Given the importance of ensuring the safe and efficient operation of the generation assets and the T&D System, LUMA respectfully submits that this information constitutes CEII that should be maintained confidentially to safeguard their integrity and protect them from external threats.

23. It is respectfully submitted that the protection of this confidential information 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. Therefore, on balance, the public interest to protect CEII weighs in favor of sealing Attachment 1 to LUMA's response to TRS-5 from disclosure.

IV. Identification of Confidential Information

critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, construction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

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-TRS-5 <i>PC-of-LUMA-TRS-5_Attachment 1.xlsx</i>	Columns A & B	Critical Energy Infrastructure Information 18 C.F.R. § 388.113; 6 U.S.C. §§ 650 (4) (2025); 6 U.S.C. § 671 (3)	August 20, 2025

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 1 to LUMA's response to ROI TRS-5; 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-Reboreda, jfr@sbgbaw.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**, hriivera@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; columbres@whitecase.com; iglassman@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;

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